troleum products, and busses from said supplier defendants to the exclusion of products competitive therewith;

(b) That said money and capital made available by the supplier defendants would be utilized by defendants National, American, and Pacific to purchase or secure the
14 control of or a financial interest in local transit systems located in the various states of the United States when the securing of such control or interest in said local transit systems would further the sale of and create an additional market for the products of the supplier defendants to the exclusion of products competitive thereto;

(c) That defendants National, American, Pacific, and their operating companies, would not renew or enter into any contracts for the purchase, rental, or use of tires, tubes, motorbusses, or petroleum products from suppliers other than the supplier defendants without the consent of the supplier defendants servicing the territory wherein such products and equipment were to be used;

(d) That defendants National, American, and Pacific would not dispose of their interest in any operating company without requiring the party acquiring such operating company or equipment thereof to assume the obligation of continuing to purchase its requirements of tires, tubes, motorbusses, and petroleum products from the supplier defendants herein;

(e) That neither defendants National, American, and Pacific nor their operating companies would convert or change the equipment used by them from a type using the products sold by the supplier defendants to any other type without the consent of the supplier defendants herein;

(f) That neither defendants National, American, and Pacific nor their operating companies would purchase any new type of equipment which would use products other than the products sold by the supplier defendants without the consent of the supplier defendants herein;

(g) That the motorbus, petroleum, tire, and tube business of defendants National, American, Pacific, and their
15 operating companies would be allocated and divided among the supplier defendants in an artificial, arbitrary, and noncompetitive manner, as is more fully set forth in Paragraph 22 (b) herein.

(h) That as National or American acquired local transportation systems in the Eastern section of the United States, this market would be allocated to and preempted by a company selling petroleum products in the Eastern section of the United States.

22. During the period of time covered by this Complaint and for the purpose of forming an effectuating the aforesaid combination and conspiracy, the defendants and other persons to the

plaintiff unknown, by agreement and concert of action, have done the things which, as hereinbefore alleged, they conspired to do, including but not limited to the following acts:

(a) Between January 1, 1939, and the date of the filing of this Complaint, the supplier defendants purchased stock in defendants National, American, and Pacific, substantially all of the proceeds of which were used by said defendants to acquire control of, or financial interest in local transit systems throughout the United States. Said stock purchased by the supplier defendants were in the approximate amounts as follows:

Name of Supplier Defendant:	*Amount paid for stock purchased*
Standard Oil Company of California, Federal Engineering Corporation	$2,074,310.57
General Motors Corporation	3,190,802.32
Phillips Petroleum Company	1,574,064.82
Firestone Tire & Rubber Company	1,383,403.41
Mack Manufacturing Corporation	1,300,071.43

(b) The business of supplying tires, tubes, motorbusses, and petroleum products to the defendants National, American, Pacific, and their operating companies was and is divided among the supplier defendants as follows:

16

(1) The defendant Firestone was allocated and has supplied substantially all the automotive tires and tubes required by the operating companies of National, American, and Pacific;

(2) The defendants General Motors and Mack were allocated and have supplied substantially all the motorbusses used by defendants National, American, Pacific, and their operating companies. This motorbus business was divided between defendant General Motors and defendant Mack as follows: Defendant General Motors was allocated and it furnished approximately 85% of all the motorbusses, required by defendant National and its operating companies as of August 2, 1939, and approximately 42.5% of all motorbusses required by any operating company in which defendant National thereafter acquired ownership, control, or a substantial financial interest. Defendant Mack was allocated and it furnished approximately 42.5% of all motorbusses required by the operating companies in which National acquired ownership, control, or a substantial financial interest after August 2, 1939. The remaining 15% of said motorbus business was reserved for emergency purchases or for disposition as agreed upon by the supplier defendants;

(3) The petroleum products business of National, American, Pacific, and their operating companies, was and is divided in such a manner that the defendant Standard provides substantially all the petroleum products requirements of the said defendants and their operating companies doing business on the Pacific Coast and

in adjacent areas, including but not limited to the States of
17 California, Washington, and Utah, and the defendant Phillips provides substantially all the petroleum products requirements of the defendants National and American and their operating companies located in the Midwestern section of the United States, including but not limited to the States of Michigan, Indiana, Illinois, Missouri, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, and Oklahoma.

(c) Defendants National, American, and Pacific have acquired a financial interest in or control of local transportation systems in cities and areas including but not limited to the following: Los Angeles, California; St. Louis, Missouri; Baltimore, Maryland; Spokane, Washington; Salt Lake City, Utah; and Tampa, Florida.

V. Effects of the Conspiracy

23. The combination and conspiracy hereinbefore alleged have had, as intended by the defendants, the following effects, among others:

(a) Eliminating competition from other suppliers in the sale of busses, tires, tubes, and petroleum products to defendants National, American, Pacific, and their operating companies;

(b) Substantially and unreasonably restraining interstate trade and commerce in tires, tubes, motorbusses, and petroleum products sold to local transportation systems of the United States in which defendants National, American, and Pacific have or acquire a financial interest;

(c) Substantially eliminating, suppressing, and excluding
18 competition in the sale to defendants National, American and Pacific, and their operating companies, of tires, tubes, motorbusses, and petroleum products;

(d) Charging noncompetitive prices for tires, tubes, motorbusses, and petroleum products sold to defendants National, American, Pacific, and their operating companies;

(e) The nation-wide market of defendants National, American, Pacific, and their operating companies for tires, tubes, motorbusses, and petroleum products has been divided among and allocated to the supplier defendants herein.

Prayer

Wherefore, the plaintiff prays:

1. That the Court adjudge and decree that the defendants have engaged in an unlawful combination and conspiracy in violation of Sections 1 and 2 of the Sherman Antitrust Act;

2. That the supplier defendants be required to divest themselves of all common and preferred stock or other financial interest in the defendants National, American, Pacific, and their operating companies.

3. That all sales or investment contracts, written or oral, between the supplier defendants and the defendants National, American, Pacific, and their operating companies be declared void, unenforceable, and of no legal effect;

4. That the defendants National, American and Pacific, and their operating companies be perpetually enjoined from purchasing or otherwise acquiring any motorbusses, tires, tubes, and petroleum products used or consumed by said defendants or their operating companies without first advertising for competitive bids for such supplies, said advertising and competitive bidding to be pursuant to and under a plan to be incorporated into and made a part of any final order entered by the Court in this case;

5. That the defendants National, American, and Pacific be ordered to make such disposition of their interests and holdings in local transportation companies as is necessary to restore competition and to dissipate the effects of the unlawful conspiracy; and that defendants National, American, and Pacific be permanently enjoined from acquiring, directly or indirectly, any financial interest in any local transportation system operating in any city, town, or county of any state of the United States without first obtaining the approval and authority of this Court;

6. That the defendants herein and each of them and their officers, directors, and representatives and all persons and corporations acting or claiming to act on behalf of them be perpetually enjoined and restrained from combining and conspiring to monopolize, or to restrain interstate trade and commerce of the United States in the manner and by the means described herein, and be perpetually enjoined from engaging in or participating in agreements, understandings, practices, or arrangements having a tendency to revive or continue any of the aforesaid violations of the Sherman Antitrust Act;

7. That the plaintiff have such other and further relief as the nature of the case may require and as to the Court may seem proper.

8. That plaintiff recover its costs of this suit.

9. That pursuant to Section 5 of the Sherman Act, writs of subpena issue to each of the defendants as are not otherwise subject to service within the District demanding them and each of them to appear herein and answer each allegation of the Complaint

and to abide by and perform such acts, orders, and decrees
20 as the Court may make in the premises.

William C. Dixon,
WILLIAM C. DIXON,
Special Assistant to the Attorney General.

Jesse R. O'Malley,
JESSE R. O'MALLEY,
Special Attorney.

Robert J. Rubin,
ROBERT J. RUBIN,
Special Assistant to the Attorney General.

Leonard M. Bessman,
LEONARD M. BESSMAN,
Special Attorney.

Tom C. Clark,
TOM C. CLARK,
Attorney General of the United States,

Wendell Berge,
WENDELL BERGE,
Assistant Attorney General,

James E. Kilday,
JAMES E. KILDAY,
Special Assistant to the Attorney General,

James M. Carter,
JAMES M. CARTER,
United States Attorney,
For the Southern District of California.

21 In the District Court of the United States for the Southern District of California, Central Division

[Title omitted.]

Order, enlarging time within which to move or plead:
July 15, 1947

Good cause appearing therefor, it is hereby ordered that each and every defendant herein shall have to and including August 11, 1947, within which to file answer to, or file notice of motion or motions with respect to, or otherwise move or plead with respect to the complaint herein.

Dated July 15, 1947.

LEON R. YANKWICH,
United States District Judge.

22 In the District Court of the United States Southern District of California Central Division

[File endorsement omitted.]
[Title omitted.]

Notice of motions of Mack Mfg. Corp., to dismiss and for more definite statement of bill of particulars; affidavit in support of motion to dismiss; points and authorities.

Filed Aug. 7, 1947

To the United States of America, Plaintiff in the above entitled action, and to its attorneys of record:

You are hereby notified that on September 15, 1947, at ten o'clock a. m., in the courtroom of the United States District Judge Leon R. Yankwich, in the United States Post Office and Court House, Los Angeles, California, Mack Manufacturing Corporation, one of the defendants in the above-entitled action, will present and submit the following motions:

Motion No. 1

Said defendant moves to dismiss the bill of complaint on file in the above-entitled section on the ground that said defendant is not a resident or citizen of the Southern District of California and has no office or place of business in said District and that
23 the above-entitled Court is not a convenient forum for the trial of said action and that the most convenient forum therefor is the United States District Court for the Northern District of Illinois, Eastern Division (Chicago). This motion is based upon the complaint on file herein, the annexed affidavit of C. W. Haseltine and affidavits filed in support of a like motion made by National City Lines, Inc. and Pacific City Lines, Inc., and annexed memorandum of points and authorities.

Motion No. 2

Said defendant moves for a more definite statement or for a bill of particulars of the matters in the complaint hereinafter mentioned upon the ground that the same are not alleged with sufficient definiteness or particularity to enable said defendant properly to prepare its responsive pleadings. The defects in the complaint complained of and the details desired are the following:

1. As to paragraph 20:

State whether it is claimed that the "substantial part of the interstate commerce there referred to comprised, geographically,

less than the whole of the United States. If it is so claimed, then describe the geographical area or areas that are comprehended within said "substantial part" that it is claimed defendants conspired to restrain or monopolize. State separately, as to each, what was the aggregate dollar volume of buses, of tires and tubes, and of petroleum products, sold in such area or areas by all bus, by all tire and tube manufacturers, and by all petroleum producers and refiners in the United States in the years 1944, 1945, and 1946.

2. As to paragraph 21:

(a) State whether it is claimed that the alleged
24 combination or conspiracy has consisted of (i) concert of action independent of agreement, continuing or otherwise; (ii) agreement, continuing or otherwise independent of concert of action; or (iii) both agreement, continuing or otherwise, and concert of action.

(b) With reference to the "continuing agreement" alleged, state whether it is claimed that all defendants have been parties thereto since on or about January 1, 1937; and if not, state the periods of time during which it is claimed that each of the defendants were, and conversely were not, parties to such agreement.

(c) With reference to the "concert of action" alleged, state whether it is claimed that all defendants participated in fact in each acquisition of or attempt to secure control or acquire a substantial financial interest in, the local transportation companies referred to in paragraph 20 of the complaint; and, if not, state as to each such acquisition or attempt which defendants did or did not in fact participate therein.

(d) State whether it is claimed that there was or is one agreement or combination, or conspiracy among all defendants, or two or more agreements, combinations, or conspiracies among some or all defendants; if the latter, specify each, and the terms of each such agreement, combination, or conspiracy and the claimed participants therein.

(e) State whether it is claimed that the alleged "continuing agreement and concert of action" has any terms other than those set forth in the complaint. If so, set forth all such other terms.

(f) State separately as to each defendant and as to each alleged agreement whether it is claimed that such defendant joined or entered into an express agreement, or whether it is claimed that each such agreement is to be inferred or implied.

25 (g) State the name or names of each of the "operating companies" referred to in subdivisions (a), (c), (d), (e), (f), and (g).

(h) State whether it is claimed that any such agreement embraced "operating companies" other than those in which control

or a financial interest was purchased with money or capital contributed by the supplier defendants; and, if so, identify each such operating company.

(i) State whether it is claimed that the participation by any supplier defendant in the alleged "continuing agreement and concert of action" was dependent or conditioned upon the participation therein of any other supplier defendant or defendants; if so, state the facts in this connection.

(j) State what is meant by and define the allegations appearing in subparagraph 21 (g) that the motorbuses, petroleum, and tire and tube business of said defendants "would be allocated and divided among the supplier defendants in an artificial, arbitrary, and noncompetitive manner."

(k) State the time when and the place where it is claimed that the defendants or any of them entered into each such agreement, whether express, inferred, or implied, each such consent or refusal to consent, each such assumption and each such determination. State whether it is claimed that each or any such agreement, consent or refusal to consent, assumption or determination was reduced to writing or partially so, or was oral; and attach a copy of each such writing.

3. As to paragraph 22:

(a) State whether it is claimed that the prices paid to the supplier defendants for tires and tubes, for buses, and for petroleum products, supplied to defendants National, American and Pacific, and their operating companies, or any of them were generally in excess of, or the same as, or lower than the prices at which such products were obtainable from other suppliers; and, if so, then state which and set forth the facts in that connection. State whether it is claimed that such tires and tubes, such buses, and such petroleum products were generally of an inferior, or of the same, or of a superior grade or quality to the tires and tubes, the buses, and the petroleum products which were obtainable by said defendants from other than the supplier defendants; and, if so, then state which, and set forth the facts in that connection.

(b) As to each alleged agreement made by a supplier defendant with any of said defendants or any of their operating companies, state whether or not each defendant was a party thereto, or if any defendant was not a party thereto, state when and in what manner, if at all, such defendant ratified or approved such agreement.

(c) State as to each defendant the act or acts claimed to have been committed by it which it is claimed made such defendant a participant in the conspiracies alleged in the complaint.

4. As to subparagraph 23 (a):

State the names and addresses of the alleged "other suppliers" of buses, of tires and tubes, and of petroleum products, which it is claimed were eliminated from competition in the sale of such products to said defendants or their operating companies or any of them, and state the cities or other areas where such elimination of competition assertedly occurred.

5. As to subparagraph 23 (b):

State when, where, by what means, and by virtue of what facts the acts and conduct of each supplier defendant substantially or unreasonably restrained trade or commerce in buses, in tires and tubes, and in petroleum products, sold to local transportation systems of the United States in which said defendants or any of them have control or a financial interest.

6. As to subparagraph 23 (c):

State when, where, by what means, and by virture of what facts, competition was substantially eliminated, suppressed and excluded in the sale to said defendants and their operating companies of tires and tubes, of motorbuses, and of petroleum products or any of these.

7. As to subparagraph 23 (d):

State separately, as to motorbuses, as to tires and tubes, and as to petroleum products, what it is claimed constitute of constituted "noncompetitive prices." State whether it is claimed that the prices paid by said defendants or any of their operating companies to any of the supplier defendants were higher than, the same as, or lower than, prices for like commodities obtainable from competitors; and if so, state which. State the facts upon which the Government predicates the allegation that the prices charged to said defendants and their operating companies by the supplier defendants are or were "noncompetitive prices." State whether such alleged "noncompetitive prices" were evidenced wholly or in part in writing. If in writing or partially so, attach copies of each such writing and state when, where and by whom negotiated and entered into.

8. As to subparagraph 23 (e):

State when, where, by what means and by virtue of what facts it is claimed that the alleged nation-wide market of said defendants and their operating companies for tires and tubes, for motorbuses, and for petroleum products "has been divided among and allocated to" the supplier defendants; and state the facts with reference to such allocation and

division and the geographical area or areas allegedly affected thereby.

9. As to paragraphs 20 and 22:

State whether it is claimed that the "other persons to the plaintiff unknown," or any of them, were employees or otherwise represented the defendants or any of them or were under the supervision of their duly authorized officers or agents, and, if so, identify such other persons and state their connection with the defendants or any of them.

Said defendant further moves that as to any of the above-requested information which the Government does not now have but hereafter acquires, it be ordered to furnish the same to counsel for said defendant immediately upon the acquisition thereof.

Said motion will be based upon the complaint in the above-entitled action and upon the memorandum of points and authorities hereto annexed.

Dated at Los Angeles, California, this 7th day of August 1947.

WRIGHT AND MILLIKAN,
LOYD WRIGHT,
CHARLES E. MILLIKAN,
By LOYD WRIGHT,
Attorneys for defendant,
Mack Manufacturing Corporation.

29 In the District Court of the United States Southern District of California Central Division

[Title omitted.]

Affidavit of C. W. Haseltine in support of motion of Mack Manufacturing Corporation for dismissal

STATE OF NEW YORK,
County of New York, ss:

C. W. Haseltine, being duly sworn, deposes and says:

I am Secretary-Treasurer of Mack Manufacturing Corporation. I make this affidavit in support of a motion by defendant Mack Manufacturing Corporation (hereinafter referred to as Mack) to transfer this proceeding on the ground of forum non conveniens from this Court to the Eastern Division of the Northern District of Illinois, in the interest of justice.

Mack is a Delaware corporation. Its principal executive offices are located in New York City. Its factories are at Allentown, Pennsylvania; Plainfield, New Jersey; New Brunswick, New Jersey; and Long Island City, New York. It has no place of

business in California. Its wholly owned subsidiary, Mack-
30 International Motor Truck Corporation, does have a sales and service branch located in Los Angeles and in other cities throughout the United States. Such branches, however, are in the nature of retail sales and service establishments, whose personnel are concerned only with local sales activities.

The records of Mack are maintained at its New York office, except for manufacturing, engineering, and research records which are kept at its factories. The records kept at sales and service branches such as the Los Angeles branch of Mack-International Motor Truck Corporation are those concerning local sales and service and no records of sales made to defendants National, Pacific, and American, or any of them, are made or kept there.

I am advised by counsel for Mack that the trial of this case will undoubtedly necessitate the production of records and documents from this defendant's executive offices, and the attendance from time to time of personnel from its New York office. It is anticipated that such witnesses as the company may call in its defense will be residents of New York or its vicinity.

Under these circumstances, the difficulties in carrying on a proper defense to this proceeding on a transcontinental scale are so great as to put this defendant at a serious disadvantage and work a substantial injustice. As far as this defendant is concerned, there is no occasion for designating Los Angeles as the place of trial. The complaint does not allege that Mack had any part in any transaction taking place in the Southern District of California. The complaint alleges the acquisition, pursuant to an agreement between American City Lines, Inc. and Federal Engineering Corporation, in December 1944, of an interest by American City Lines, Inc., in the properties of Los Angeles Rail-
way Corporation, and a subsequent agreement between Los
31 Angeles Transit Lines and Standard Oil Company of California for the supply of fuel. Mack never purchased any stock of American City Lines and had disposed of all of its stock in National City Lines, Inc. and Pacific City Lines, Inc., before the alleged transaction in California took place.

I respectfully state that this suit should be tried in the Northern District of Illinois, Eastern Division, because that is the principal place of business of National City Lines, Inc., which has, so I am informed and believe, voluminous records and documentary evidence which it will be necessary to introduce on behalf of the defendants in this suit. In any event, it will be a great hardship and expense to Mack Manufacturing Corporation for this case to be tried in Los Angeles. If the case is tried in Chicago, travel from New York to the place of trial will require only an

overnight trip by rail, as against a minimum of two days and three nights to Los Angeles. Chicago can be reached by air from New York in from three and one-half to four and one-half hours. Communication as well as transportation is faster and much less expensive to Chicago than to Los Angeles.

[CORPORATE SEAL] C. W. HASELTINE.

Subscribed and sworn to before me this 14th day of July 1947.

W. Stanley Murray,
W. STANLEY MURRAY,
Notary Public in and for said County and State.

[SEAL]

Queens Co. Clk's No. 722, Reg. No. 101-M-9; N. Y. Co. Clk's No. 43, Reg. No. 189-M-9; Kings Co. Clk's No. 2, Reg. No. 183-M-9; Bronx Co. Clk's No. 2, Reg. No. 29-M-9; Richmond Co. Clk's No. 1-M.

Commission expires March 30, 1949.

32 In the District Court of the United States for the Southern District of California, Central Division

[Title omitted.]

Memorandum of points and authorities of defendant Mack Manufacturing Corporation

I

IN SUPPORT OF MOTION TO DISMISS

1. The Court has the discretionary power to refuse to assume jurisdiction of a suit and to dismiss the complaint therein when it appears that the forum in which the action is filed is not a convenient forum to try the action and that the action should, in the interests of justice, be tried in another district.

Gulf Oil Company v. Gilbert (March 10, 1947, — U. S. —, 91 L. Ed. 755, 759, 15 U. S. L. W. 4315, where the Court said (page 759, L. Ed):

"Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of
33 willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive."

Cf. Judge Yankwich, "The New Federal Rules of Criminal Procedure With a Commentary" (1946), pages 159-160.

Williams v. Green Bay & Western R. R. Co. (1946), 326 U. S. 549, 555. Footnote, where Mr. Justice Douglas refers to a statement of the English Court, reading as follows:

"If in the whole circumstances of the case it be discovered that there is a real unfairness to one of the suitors in permitting the choice of a forum which is not the natural or proper forum, either on the ground of convenience of trial or the residence or domicile of parties, or of its being either the locus contractus, or the locus solutionis, then the doctrine of forum non conveniens is properly applied."

Great Western R. R. Co. v. Miller (1869), 19 Mich. 305, where the Court said:

"It is not to be denied that much hardship is likely to arise where a person is called upon to defend himself against a charge arising out of transactions occurring at a distance, and out of the jurisdiction. Witnesses cannot always be compelled
34 or induced to be present at the trial, and where a knowledge of localities becomes essential, it is impossible to obtain a view by the jury."

Goldman v. Furness Withy & Co. (D. C. N. Y. 1900), 101 Fed. 467. Logan v. Bank of Scotland (1906), 1 K. B. 141.

2. The fact that all major transactions which appear to be involved in the complaint herein centered about the home office of National City Lines, Inc. and its subsidiaries, in Chicago, Illinois; that substantially all the witnesses who will be called by said defendant work in and reside about Chicago and in communities that are in the Chicago area or are much more convenient to the Chicago area; that Mack Manufacturing Corporation has its office and principal place of business in New York City and that its officers and employees will doubtless be required to appear and testify as witnesses in the said action; and that substantially all the documentary evidence will be produced from those areas, justify and compel the conclusion that the convenient forum to try this suit is Chicago and not Los Angeles.

Gulf Oil Company v. Gilbert, supra.

3. The fact that the prayer of the complaint seeks relief which calls for continuing supervision of certain affairs of National City Lines, Inc., and its subsidiaries, where their headquarters are in Chicago, Illinois, constitutes additional grounds for invoking the doctrine of forum non conveniens.

Justice Black said, in Koster v. Lumbermens Mutual Casualty Company (March 10, 1947, 91 L. Ed. 764, 772, that:

35 "There may be rare instances in which a federal court could decline to provide an equitable remedy against multistate corporate defendants. A prayer for relief which requires the appointment of a receiver or the detailed and continuing super-

vision of the affairs of a defendant corporation whose headquarters is beyond the jurisdiction of the court would in my view constitute such a situation."

II

In support of motion for more definite statement or for bill of particulars

1. Failure to state separate claim in separate causes of action, rendering complaint uncertain, while no longer ground for dismissal under new Rules, nevertheless entitles defendant to a more definite statement or bill of particulars.

(a) Better practice even under new Rules is to state claims separately.

In Brooks Brothers v. Brooks Clothing of California (D. C. Cal. 1945), 60 Fed. Supp. 442, 447, (affirmed C. C. A. 9, 1947, 158 Fed. (2d) 798, cert. den. — U. S. —), Judge Yankwich said that:

"* * * While, since the enactment of the Federal Rules of Civil Procedure * * *, the failure to state claims separately is no longer a ground for dismissal, it [is] the better practice and more consonant with the requirement of the rules and the spirit of the simpler procedure they augurated, to state them separately."

36 Ford Motor Company v. McFarland, (D. C. Wash. 1939, Yankwich, J.), 39 Fed. Supp. 303.

2. Plaintiff's failure to state its claims under Section 1 separately from its claims under Section 2 of the Sherman Act renders the complainant uncertain in material respects and requires a more definite statement or bill of particulars as specified in the accompanying motion. Particularly with respect to complaint, paragraph 20, page 7.

3. Defining the "part" of interstate trade and commerce charged to be restrained or monopolized under Section 2 of the Sherman Act is an important issue in the case.

Indiana Farmers Guide Publishing Co. v. Prairie Farmers Publishing Co. (1934), 293 U. S. 268, 269. Patterson v. United States (C. C. A. 6, 1915), 222 Fed. 599, 621–622, cert. den. 238 U. S. 635.

(a) Identification of the "part" of the interstate trade and commerce it is claimed is restrained or monopolized and the volume of business of the supplier defendants and of their competitors in connection therewith, is necessary in view of the fact that the complaint in this regard is uncertain and indefinite.

Lowe v. Consolidated Edison Company, Inc. (D. C. N. Y. 1940), 4 F. R. S. 208, 209, where District Judge Leibell said:

"Plaintiffs should state generally what portion of the trade in electrical appliances defendants have attempted to restrain or

monopolize. It is almost axiomatic in the field of Antitrust
37 Law that only unreasonable restraints of trade are bad and a statement of the portion of the trade restrained may very well have a bearing upon the application of this principle to this case. The portion which defendants are alleged to have combined to restrain should also be stated. As the allegation now stands, it is applicable to the entire trade in such appliances and defendants will be put to an unnecessary burden in preparing their defense if the claim in fact is limited to only a portion of the trade."

4. A defendant in an antitrust suit is entitled to be advised in the complaint as to the substance of the combination, including the times and places where the alleged conspiracy was made and the detail of what each defendant is charged with doing to bring him within the combination.

United States v. Griffith Amusement Company (D. C. Okla. 1940), 1 F. R. D. 229, 232, where, in an equity suit under the Sherman Act, Judge Vaught said:

"The motions for bills of particulars ask that the time and place be named where these combinations were formed and that the complaint state the specific exhibitor and specific distributor who participated in the formation of any particular conspiracy.

"It is admitted that these are blanket allegations. They cover a wide territory, many theatres, many different films, and many exhibitors and distributors. The plaintiff
38 objects to the bills of particulars for the reason that it would make the pleadings too voluminous and, furthermore, that many of the facts will have to be developed by discovery before the plaintiff can state who participated in the various agreements or what part anyone had in the formation of the combinations of conspiracies.

"This may be true and it is evident that the pleadings will be very voluminous. However, the plans and specifications for this structure were selected by the plaintiff and if it brought an action which, under the rules of civil procedure and under the federal statutes, necessitates voluminous pleadings, the defendants are not chargeable therewith."

International Tag & Sales Book Company v. American Sales Book Company (D. C. N. Y. 1943), 7 F. R. S. 63, 65, where District Judge Bright said:

"The following particulars will be granted to the moving defendants:

"1. As to paragraphs 21 (e) and 25 (d) state whether it is claimed the agreements therein alleged were oral or written or partly one or the other, and the dates when made and the parties

thereto so as to enable the moving defendants to identify each thereof.

"2. As to paragraphs 14, 21, and 25 (b), (d), (g), and (h), specify the period of time during which each of the acts or activities alleged therein are claimed to have been
39 performed by each moving defendant.

"3. Identify the persons or concerns referred to in paragraph 21 (c) as any other independent; in 21 (d) as bogus or alleged independent companies; in 21 (e) as bogus independents; in 21 (f) as purchasers; in 21 (g) as plaintiff's customers; in 25 (b) as another manufacturer of salesbooks and manifold books not a member of the illegal combine; and in 25 second paragraph (q) as other members."

Lowe v. Consolidated Edison Company, Inc. (D. C. N. Y. 1940), 4 F. R. S. 208, 209, where District Judge Leibell said:

"In cases founded upon the Antitrust Act which are dependent for final relief upon the conformation of numerous facts to such flexible concepts as monopoly, interstate commerce, restraint of trade, etc., which are of serious and immediate concern to commercial enterprise, I think that the court should require from plaintiffs in their pleading a statement of facts sufficiently complete to mitigate the dangers that might result if these cases proceeded upon the shaky foundation of a vague and somewhat indefinite complaint. United States v. Griffith Amusement Co., 1 F. R. D. 229 (3 Fed. Rules Serv. 12e. 231, Case 5.) I am, therefore, inclined to consider liberally defendants' requests for particulars of plaintiffs' claim * * *"
40

Dean Rubber Manufacturing Company v. Schmidt, (D. C. Ill. 1943), 7 F. R. S. 71, 72, where District Judge Holly said:

"* * * I am of the opinion that plaintiff should state in a bill of particulars where the various acts of which they complain were committed."

Respectfully submitted.

WRIGHT AND MILLIKAN,
LOYD WRIGHT,
CHARLES E. MILLIKAN,
By LOYD WRIGHT,
Attorneys for defendant,
Mack Manufacturing Corporation.

Received copy of the within notice this 7th day of August, 1947.

W. C. DIXON,
H. S.
Attorney for U. S. Government.

[File endorsement omitted.]

41 In the District Court of the United States for the Southern District of California, Central Division

[Title omitted.]

Joinder of defendants, Standard Oil Company of California and Federal Engineering Corporation. In motions Nos. 1 and 2 filed by defendants, National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc.

Filed Aug. 11, 1947

Defendants, Standard Oil Company of California and Federal Engineering Corporation join in Motion No. 1 (motion to dismiss) and Motion No. 2 (motion for a more definite statement or for bill of particulars) filed herein by defendants, National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc.,
42 and noticed for hearing before this Honorable Court on September 15, 1947. In joining in said motion said defendants adopt and reassert the same and the ground therefor as well as all affidavits filed in support thereof and the memorandum of points and authorities supporting the same.

Defendants, Standard Oil Company of California and Federal Engineering Corporation, reserve the right at any stage of the proceedings herein, to move to dismiss the complaint or any part thereof on the ground that it fails to state a claim upon which relief can be granted.

Dated August 11, 1947.

LAWLER, FELIX & HALL,
FELIX T. SMITH,
JOHN M. HALL,
By John M. Hall,
JOHN M. HALL,
Attorneys for defendants, Standard Oil Company of California and Federal Engineering Corporation.

Received copy of the within Joinder of Defendants this — day of August, 1947.

WILLIAM C. DIXON,
Special Assistant to the Attorney General,
JESSE R. O'MALLEY,
LEONARD M. BESSMAN,
Special Attorney
By WILLIAM C. DIXON,
L. M.
Attorneys for Plaintiff.

43 In the District Court of the United States Southern District of California, Central Division

[File endorsement omitted.]
[Title omitted.]

Affidavit in support of motion to dismiss on the ground that suit should not be tried in this court but, if tried at all, it should be in the District Court of the United States for the Northern District of Illinois, Eastern Division (Chicago)

Filed Aug. 11, 1947

STATE OF ILLINOIS,
County of Cook, ss:

E. Roy Fitzgerald, being duly sworn, deposes and says:

1. I am a Director and President of defendant National City Lines, Inc. (hereinafter referred to as "National"). I was a director and Chairman of the Board of American City Lines, Inc. (hereinafter referred to as "American") prior to its merger into National in 1946. Pacific City Lines, Inc. (hereinafter referred to as "Pacific"), a subsidiary of National, is also a defendant.

2. I make this affidavit on behalf of defendant National and defendant Pacific. This affidavit is made in support of a motion of said-named defendants for an order to dismiss the Complaint on the ground that in the interest of justice this suit should be tried in the District Court of the United States for the Northern District of Illinois, Eastern Division (Chicago).

44 3. This affidavit sets forth some of the more material facts respecting the history, business, and operations of National, and the manifest hardship to the defendants, and particularly to National, of trying the suit in the Southern District of California. The transactions which appear to be the subject of the Complaint took place chiefly in Chicago, Illinois, and none of them took place in this District, as appears from the details set forth hereinafter. Any trial of this proceeding in Los Angeles would cause substantial hardship to the defendants, and especially the stockholders of National and of the other defendants. Substantially all evidence, documentary and personal, which the defendants believe can possibly be relevant to the issues of this case, are located far distant from Los Angeles. It would be extremely difficult and expensive, and impossible in some instances, to obtain the attendance in Los Angeles of the many witnesses whose presence will be essential to a full and fair trial. The necessary presence for several months at a trial in Los Angeles, far removed from the main office of National in Chicago, of the chief executive

officers of National and other key employees of National, would prevent their attention to the general business of National and work a great hardship upon it and its stockholders. Most of, if not all, the essential witnesses of all defendants, including National, are engaged in business or reside far distant from Los Angeles. Even to the extent that witnesses and documents are brought before the Court in Los Angeles, great and unnecessary expense will be incurred by the defendants. The Government has an office of the Antitrust Division in Chicago and no substantial hardship will be borne by it if the trial is held there.

4. The following facts alleged in the Complaint are true with respect to the residences or principal places of business of each defendant:

(i) National has its principal place of business in Chicago, Illinois;

(ii) American, prior to its merger into National in 1946, had its principal place of business in Chicago, Illinois;

(iii) Pacific has its principal place of business in Oakland, California;

(iv) The chief officers of National reside in or about Chicago, Illinois;

(v) Defendant General Motors Corporation (hereinafter referred to as "General Motors") has its principal place of business in Detroit, Michigan;

(vi) Defendant Firestone Tire & Rubber Company (hereinafter referred to as "Firestone") has its principal place of business in Akron, Ohio;

45 (vii) Defendant Mack Manufacturing Corporation (hereinafter referred to as "Mack") has its principal place of business in New York, New York;

(viii) Defendant Phillips Petroleum Company (hereinafter referred to as "Phillips") has its principal place of business in Bartlesville, Oklahoma;

(ix) Defendant Standard Oil Company of California (hereinafter referred to as "Standard") has its principal place of business in San Francisco, California;

(x) Defendant Federal Engineering Corporation (hereinafter referred to as "Federal"), a subsidiary of Standard, has its principal place of business in San Francisco, California.

Thus, not one of the defendants has its principal place of business or resides in the District where the Complaint was filed.

Firestone, General Motors, Mack, Phillips, and Standard are sometimes hereinafter referred to as the "suppliers," or "the supplier defendants."

5. The Complaint does not allege that the alleged combination and conspiracy was formed or agreed upon or entered into in the

Southern District of California. The only reference to this District is an allegation that General Motors and Standard "have offices, transact business, and are found within the Central Division of the Southern District of California." (Par. 2.)

6. Business of National and its relation to the suppliers.

National is, by the Complaint, alleged to be the central defendant and its relationships with the other defendants is attacked by the Complaint. It was with National that all the suppliers are alleged to have made the agreements which are complained of, and National is alleged to have purchased interests in operating companies which carried out the alleged concert of action. National is charged with having participated in each of the acts which are alleged to form the concert of action which is complained of.

National is a Delaware corporation. It was formed in 1936 at the instance of my four brothers and myself who then turned over to it a few bus properties in the middle west which we had owned or controlled. We became, and always have been, directly or indirectly, the owners of the largest block of its common stock and its principal executive officers. I have been its President since its formation.

46 National was founded and has been developed on the policy of buying interests in transit systems, which were totally or partially obsolete, and then converting these systems into modern bus transportation units.

National has always been and now is managed and operated from Chicago. Its principal place of business has always been and now is Chicago.

Investigations respecting transit operating companies throughout the United States were directed from Chicago by National and American. All important policies and decisions in connection with the purchase of interests in operating companies were made by National or American in Chicago.

In practically every instance all National's one hundred percent subsidiaries, with the exception of the subsidiaries of Pacific, are now, and over the whole life of National have been, closely supervised from Chicago. Their books of account have been kept in Chicago, their purchases of supplies have been arranged in Chicago, and all other operations have been supervised in Chicago. The relation of National with the suppliers, in respect to the operating companies in which National owned less than a 100% interest, has always been carried on in Chicago.

7. So far as defendants are presently advised the Complaint appears to be based essentially upon (1) separate or individual contracts under which the supplier defendants severally invested in the securities of National or American, and (2) contracts under

which operating companies (in which National, American and Pacific were or are interested) purchased certain of their requirements of motorbuses, tires and tubes, and petroleum products from the supplier defendants.

(a) All such contracts with National or American (for investment and for requirements) were separately and individually negotiated and agreed upon principally in Chicago and in part at the main offices of the respective supplier defendants.

After such contracts were approved and executed on behalf of National or American in Chicago, they were severally executed by the supplier defendants, respectively, at their offices in Akron, Ohio (Firestone); Pontiac, Michigan (General Motors); New York, N. Y. (Mack); Bartlesville, Oklahoma (Phillips); and San Francisco, California (Standard).

(b) All transactions for the purchase of preferred or common stocks of National or American were negotiated and agreed
47 upon in Chicago. The stocks so purchased were issued from, delivered to and paid for by the supplier defendants, respectively, in Chicago. Likewise, the retirement of the preferred stock in National owned by the supplier defendants, and the exchange of their stock in American for National's stock in connection with the merger of American into National, were carried out in Chicago.

8. Pacific City Lines.

The operations of Pacific are and were relatively unimportant as compared with the aggregate of the transactions upon which the Complaint appears to be based. Pacific was organized in May 1938, at the instance of National, City Coach Lines, Inc. (a corporation whose stockholders were located in or about Chicago and whose business was conducted from Chicago), Standard, and General Motors. The corporation was organized as a Delaware corporation and until April 1940 its main office was in Chicago from which place its affairs were conducted. In April 1940 the main office was changed to Oakland, California, and in December 1940 National sold its entire stock interest in Pacific and withdrew from any participation in its affairs. From December 1940 until July 1946, most of the stock of Pacific was owned by certain of the supplier defendants. In July 1946, pursuant to an agreement made on March 26, 1946, stock of National was issued in exchange for all outstanding stock of Pacific, and National then became interested in and directed the operations of Pacific.

From its formation until April 1940, Pacific was managed and operated from Chicago by National in much the same manner as National managed and supervised its other subsidiary companies. Its stock issued prior to April 1940, including the shares originally subscribed for by certain of the suppliers, was issued

from and paid for in Chicago, and up to April 1940 all its directors' meetings were held in Chicago, including meetings at which the original subscription agreements of the suppliers were approved. After April 1940, Pacific was managed and operated from Oakland and all meetings of directors were held in that city with the exception of five or six held in San Francisco and one in Pontiac, Michigan. The supply contracts between Pacific and certain of the suppliers were prepared and executed by the suppliers at their main offices (Akron, Detroit, or Pontiac, and San Francisco) and were executed by Pacific in Oakland.

At the present time, the general policies of Pacific are directed from Chicago. The dealings and negotiations between Pacific and the suppliers are carried on principally in Chicago, or at the home offices of the particular suppliers.

48 9. Proof to be offered at trial.

I am advised by counsel that the trial will involve an extensive inquiry into the history, business, and operations of National from its organization in 1936 up to the present time and, in addition, the complete relationship between National and the five suppliers during this period, and possibly the relationship between National and other supplier companies who operate outside the Southern District of California. Some of the matters which will be the subject of inquiry and testimony will be the organization of National in Chicago in 1936; the growth and operation of National in Chicago over the next ten years; its relationship and contracts with the supplier defendants and other supply companies, all of which took place in Chicago or stemmed from Chicago; its financing in and from Chicago; and the purchase of and its direction and supervision of operating companies, all of which took place in and from Chicago. This proof will require the production of a mass of contracts, correspondence, and other data. It will require testimony concerning the meetings of the Boards of Directors of National and American, all which meetings, with the exception of a few, were held in Chicago; testimony respecting investigations made by National of many operating companies throughout the United States and its acquisition of interests in certain of them, all which investigations were directed from Chicago, and records of which are located in Chicago; and testimony respecting the purposes and intentions of National in making arrangements with the suppliers and the effect of such arrangements upon the business of National and upon the transportation industry generally, all which must be proved principally from records located in Chicago or from testimony of persons residing in or near Chicago. These are but a few of the many matters to be developed at the trial, and they suggest a great many others which will necessarily be gone into.

10. Documents to be used at trial.

The documents which were subpoenaed by the Government from National in the investigation which preceded the filing of the Complaint clearly reflect that the proof at the trial will be based primarily on papers and documents located in Chicago and the testimony of persons residing in or near Chicago.

Commencing in September 1946, Grand Jury subpoenas were served on National and others which called for hundreds of papers, records, documents, analyses, and compilations. National, for itself and its thirty-four Chicago operated subsidiaries, furnished the Government with a mass of papers and documents taken from files in Chicago.

49 The documents and papers furnished by National consist, among others, of the contracts between National or American and their Chicago subsidiaries, and the suppliers; inter-office memoranda relating to such contracts which were written chiefly in Chicago; correspondence respecting the contracts written to or from Chicago; contracts, assignments, bills of sale, petitions to and decisions of state regulatory bodies relating to the acquisition of interests in operating companies; and various detailed statistical compilation, schedules, and tabulations. These compilations and schedules were prepared from numerous books of account and other corporate records of National in Chicago. The preparation of such compilations and schedules took several weeks and the work of many accountants, bookkeepers, clerks, and other employees of National employed in Chicago. All persons engaged in the preparation of such compilations and schedules live in or about Chicago.

St. Louis Public Service Company, which operates in St. Louis, Missouri; Baltimore Transit Company, which operates in Baltimore, Maryland; Los Angeles Transit Lines, which operates in Los Angeles, California; and Pacific, also furnished the Government many documents and papers. Of such documents only a small number were furnished by Los Angeles Transit Lines, of which only a few concerned the relationship between the Los Angeles company and its suppliers.

11. Trial in the Southern District of California will work a great hardship upon the Defendants, and particularly on National.

I have been advised by counsel, and it is my belief, that (i) the trial of this action will probably take a number of weeks; (ii) in view of the allegations which cover a period of over ten years since 1937 it will be necessary in the interest of justice that there be made available to the Court full and complete testimony as to the many matters which will be relevant in determining the allegations; (iii) the trial of this suit will necessarily require a mass of

documentary evidence, consisting of agreements, memoranda, letters, statistical compilations, and other records, from the files of National, the five suppliers, and other companies; (iv) the documentary evidence, which will be offered by the Government as well as the various defendants, will itself necessarily require the supporting and clarifying testimony of many witnesses; (v) in addition to such documents and the witnesses in connection therewith, there will be the entended verbal testimony of a great many other witnesses; (vi) while it is impossible now to forecast how many witnesses will be called to testify; it is likely that the number will be at least one hundred; and (vii) many essential witnesses will come from various parts of the country, but largely from the Chicago area, and only a small number, if any, from Los Angeles.

12. Since all important meetings and decisions affecting National, American, and their subsidiary companies have been held or made in Chicago, this will require the presence in Los Angeles of a large part of their operating force. The executive officers of National must necessarily attend throughout the trial. Among others who will have to attend are myself, Foster Beamsley, Vice President; Ed Fitzgerald, Vice President and Treasurer; E. V. Anderson, Vice President and Controller; J. M. Schramm, Secretary and Assistant Treasurer; and G. L. Walker, Assistant Secretary; all officers of National, who have their offices and who reside in or about Chicago. A number of key employees on the accounting staff of National who are familiar with the financial and accounting matters will undoubtedly be forced to come to and stay in Los Angeles throughout the trial.

The remoteness of Los Angeles for the many individuals who are familiar with the subject matters of this proceeding will greatly handicap National, and presumably the other defendants, in preparing for trial and obtaining the testimony of witnesses whom is regards as essential in fully developing all pertinent facts.

The trial of the suit in Los Angeles will involve a great financial expense to National. In addition to all the executive staff and employees who must necessarily come to Los Angeles and stay throughout the trial, there will be the expense of preparation in Los Angeles. This preparation will necessitate the constant attention of Los Angeles counsel in addition to the general counsel for National, and in the course of preparation many of the executives and officers and employees of National will necessarily have to come to Los Angeles and spend considerable periods of time. The expense of travel to and from Los Angeles alone will be substantial.

Thus a trial in Los Angeles will cause substantial injury to the operations of National and the transit companies whose operations it supervises and will put upon National a very large financial burden. All this could be eliminated by a trial in Chicago.

13. If any offenses were committed at all, they were committed principally in Chicago and partly at the places where the various suppliers have their main offices. The alleged
51 offenses were not committed in Los Angeles or in the Southern District of California. This proceeding should not be tried in Los Angeles, which has no significant relationship to the matters involved, but should in the interest of justice be tried in the United States District Court in Chicago, where the offenses alleged were for the most part committed, if committed at all. Chicago, and least of all Los Angeles, is the place where there is the greatest access to all the sources of proof, documentary, verbal, or otherwise. Chicago, and least of all Los Angeles, is the place where it will be possible to obtain the attendance of witnesses at the least expense to the defendants and the Government. Los Angeles is the place where the trial would result in the greatest hardship to the defendants and their many stockholders, without any corresponding benefit to the Government.

14. For the many reasons above set forth, I respectfully pray this Court in the sound exercise of its discretion to dismiss the Complaint herein, so that the trial of this suit may proceed, if the Government is so advised, in the District Court of the United States for the Northern District of Illinois, Eastern Division (Chicago).

E. Roy Fitzgerald.
E. ROY FITZGERALD.

Sworn to before me this 16th day of June 1947.
[NOTARIAL SEAL] MARY E. JOYCE, *Notary Public.*

52 In the District Court of the United States for the Southern District of California Central Division

[File endorsement omitted.]
[Title omitted.]

Affidavit of C. Frank Reavis in support of motion to dismiss

Filed Aug. 11, 1947

STATE OF NEW YORK,
County of New York, ss:

C. Frank Reavis, being duly sworn, deposes and says:

1. I am, and at all times hereinafter mentioned, have been a member of the Board of Directors and a member of the Executive

Committee of the Board of Directors of National City Lines, Inc., a corporation existing under the laws of the State of Delaware (hereinafter called National), which is named a defendant herein. I make this affidavit in support of a motion to quash the purported service of process herein on April 16, 1947, upon J. M.
53 Schramm, as the purported Secretary of American City Lines, Inc. (hereinafter called American).

2. Paragraph 4 of the complaint names American a defendant and alleges that it is a corporation organized in 1943 under the laws of the State of Delaware and has been a subsidiary of National since 1943.

3. On July 15, 1946, American was duly merged into National pursuant to the provisions of Section 59 of the General Corporation Law of the State of Delaware (Revised Code of 1935, as amended) and by virtue of an Agreement of Merger, Dated May 29, 1946, between National, American, and Andover Finance Company, also a Delaware corporation. Said agreement was duly authorized, approved, signed, and acknowledged, and on July 15, 1946, was duly filed in the offices of the Secretary of State of the State of Delaware and duly recorded in the office of the Recorder of Deeds for the County of New Castle, in the State of Delaware (in which office both National and American had their original Certificates of Incorporation recorded), and on July 15, 1946, was also duly recorded in the office for the Recording of Deeds in the County of Kent (in which office Andover Finance Company had its original Certificate of Incorporation recorded), all pursuant to the provisions of said Section 59 of said General Corporation Law. A copy of said Agreement of Merger, certified by the Secretary of State of the State of Delaware and by the respective Recorders of New Castle and Kent Counties in the State of Delaware, is hereto attached, marked "Exhibit A."

4. Section 59 of the Delaware General Corporation Law provides that

54 "* * * a certified copy thereof shall be evidence of the agreement and act of consolidation or merger of said corporations, and of the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such consolidation or merger."

5. Section 60 of the Delaware General Corporation Law provides:

"When an agreement shall have been signed, acknowledged, filed, and recorded, as in Section 59 * * * of this Chapter is required, for all purposes of the laws of this State the separate existence of all the constituent corporations, parties to said agreement, or of all such constitutent corporations except the one into

which the other or others of such constituent corporations have been merged, as the case may be, shall cease * * *"

6. As a result of the foregoing, American ceased to exist on July 15, 1946, and this court cannot obtain jurisdiction over it by service of process on its purported Secretary.

7. On July 15, 1946, a new corporation having the name of American City Lines, Inc., was created under the laws of Delaware for the sole purpose of protecting the corporate name against use or abuse by others. A copy of the Certificate of Incorporation, certified by the Secretary of State of the State of Delaware of said new corporation is hereto annexed, marked "Exhibit B."

Such new corporation was organized with an initial capital
55 of $1,000. It has no other assets and has done no business whatsoever. It was not in existence prior to July 15, 1946. It could not be the corporation described in the complaint as American. It could not participate in any of the transactions described in the complaint.

8. I pray, therefore, for an order quashing the purported service of process herein upon American and dismissing the complaint as to it.

C. FRANK REAVIS.

Sworn to before me this 17th day of June 1947.

[SEAL] HELEN WORTH,
Notary Public, State of New York,
Residing in New York County.

N. Y. Co. Clk's No. 290 Reg. No. 452-W-8; Kings Co. Clk's No. 183 Reg No. 298-W-8.

Commisison Expires March 30, 1948.

56 *Exhibit "A" to affidavit*

NATIONAL CITY LINES, INC.

Agreement of Merger between National City Lines, Inc., American City Lines, Inc., and Andover Finance Company, Dated May 29, 1946

57 Agreement of Merger dated this 29th day of May 1946, made by and between National City Lines, Inc., party of the first part, and American City Lines, Inc., party of the second part, and Andover Finance Company, party of the third part, all being corporations organized and existing under and by virtue of the laws of the State of Delaware; witnesseth that

Whereas, the Board of Directors of each of said corporations, parties hereto, in consideration of the mutual agreements of said

corporations as set forth herein, do deem it advisable and generally to the welfare of said corporations and their respective stockholders that National City Lines, Inc., the party of the first part, merge into itself American City Lines, Inc., and Andover Finance Company and that American City Lines, Inc., the party of the second part, and Andover Finance Company, party of the third part, should be merged into National City Lines, Inc., the party of the first part, as authorized by the statutes of the State of Delaware, under and pursuant to the terms and conditions hereinafter set forth; and

Whereas, said National City Lines, Inc., whose certificate of incorporation was filed in the office of Secretary of State on February 5, 1936, and recorded in the office of the Recorder of Deeds for the County of New Castle, on February 5, 1936, has an authorized capital stock consisting of 1,050,000 shares, divided into 50,000 shares of preference stock of the par value of $50 per share and 1,000,000 shares of common stock of the par value of 50¢ per share, of which capital stock 609,052.5 shares of common stock (including 9,052.5 shares thereof held by Andover Finance Company) and no shares of preference stock are now issued and outstanding; and

Whereas, said American City Lines, Inc., whose certificate of incorporation was filed in the office of Secretary of State on August 31, 1943 and recorded in the office of the Recorder of Deeds for the County of New Castle, on August 31, 1943, has an authorized capital stock consisting of 320,000 shares, divided into 60,000 shares of preferred stock of the par value of $100 each and 260,000 shares of common stock of the par value of $1 each, of which capital stock 47,500 shares of such preferred stock, consisting of 9,375 shares of $5 Cumulative Preferred Stock, Series A and 38,125 shares of $5 Cumulative Preferred Stock, Series B, and 253,333 shares of such common stock are now issued and outstanding; and

Whereas, Andover Finance Company, which is the surviving company under an Agreement of Merger and Consolidation between National Consumer-Credit System, Inc. and Chicago Citizens System, Inc., which was filed in the office of Secretary of State of the State of Delaware on January 30, 1932, and recorded in the Office of the Recorder of Deeds, County of Kent, on January 30, 1932, has an authorized capital stock consisting of 77,546 shares, divided into 35,955 shares of Preferred Stock of the par value of $5 per share and 41,591 shares of Common Stock of the par value of $1 per share, of which capital stock 3,442 shares of such Preferred Stock, designated as 6% Cumulative Preferred Stock and 40,587½ shares of such Common Stock are now outstanding; and

58 Whereas, the principal office of said National City Lines, Inc. in the State of Delaware is located at No. 100 West 10th Street, in the City of Wilmington, County of New Castle, and the name and address of its resident agent is The Corporation Trust Company, No. 100 West 10th Street, Wilmington, Delaware; and the principal office of American City Lines, Inc. in the State of Delaware is located at No. 100 West 10th Street, in the City of Wilmington, County of New Castle, and the name and address of its resident agent is The Corporation Trust Company, No. 100 West 10th Street, Wilmington, Delaware; and the principal office of Andover Finance Company in the State of Delaware is located at Nos. 19–21 Dover Green, in the City of Dover, County of Kent, and the name and address of its resident agent is United States Corporation Company, Nos. 19–21 Dover Green, Dover, Delaware; now, therefore,

The corporations, parties to this agreement, by their respective Boards of Directors, in consideration of the mutual covenants, agreements and provisions hereinafter contained, have agreed and do hereby agree with each other that National City Lines, Inc. merge into itself American City Lines, Inc. and Andover Finance Company and likewise that American City Lines, Inc. and Andover Finance Company shall be merged into National City Lines, Inc. pursuant to Section 59 of the General Corporation Law of the State of Delaware, and do hereby agree upon and prescribe the terms and conditions of said merger and of carrying the merger into effect as follows:

1. National City Lines, Inc. hereby merges into itself American City Lines, Inc. and Andover Finance Company and likewise American City Lines, Inc. and Andover Finance Company shall be and each of them hereby is merged into National City Lines, Inc. which shall be the surviving corporation, hereinafter usually referred to as "the Corporation."

2. The facts required to be set forth in a certificate of incorporation of a corporation incorporated under the laws of the State of Delaware which can be stated in the case of the merger provided for in this agreement are as follows:

First, The name of the Corporation is and shall be National City Lines, Inc.

Second. The principal office of the Corporation in the State of Delaware is and shall be located at No. 100 West 10th Street, in the City of Wilmington, County of New Castle. The name and address of its agent is and shall be The Corporation Trust Company, No. 100 West 10th Street, Wilmington, Delaware.

Third. The nature of the business and the objects and purposes to be transacted, promoted and carried on are to do any and all of

the things herein mentioned as fully and to the same extent as natural persons might or could do, viz.:

(a) To subscribe for, or cause to be subscribed for, buy, own, hold, purchase, receive, or acquire, and to sell, negotiate, guarantee, assign, deal in, exchange, transfer, mortgage, pledge, or otherwise dispose of, shares of the capital stock, scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, acceptances, drafts, and evidences of indebtedness issued or created by any government or by any political subdivision thereof, or by any other corporations, joint stock companies, or associations, whether public, private, or municipal, or any corporate body, and while the owner thereof to possess and to exercise in respect thereof all the rights, powers, and privileges of ownership, including the right to vote thereon; to guarantee the payment of dividends on any shares of the capital stock of any of the corporations, joint stock companies or associations in which this Corporation has or may at any time have an interest, and to become surety in respect of, endorse, or otherwise guarantee the payment of the principal of or interest on any scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, drafts, bills of exchange, or evidences of indebtedness, issued or created by any such corporations, joint stock companies, or associations; to become surety for or guarantee the carrying out and performance of any and all contracts, leases and obligations of every kind of any corporations, joint stock companies, or associations, and in particular of any corporation, joint stock company or association any of whose shares, scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, drafts, bills of exchange, or evidences of indebtedness, are at any time held by or for this Corporation, and to do any acts or things designed to protect, preserve, improve, or enhance the value of any such shares, scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, drafts, bills of exchange, or evidences of indebtedness.

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(b) To purchase or otherwise acquire, own and dispose of any part or all of the capital stock and other securities of any corporation engaged in the transportation of passengers by omnibuses, street-cars, trackless trolleys or other vehicles, whether propelled by gas, electricity or other motive power, on and over streets, roads and highways within and without cities, villages and other municipal corporations, and over private rights of way, and to make payment therefor by the issuance of its capital stock of any class, bonds, debentures, and notes, and other obligations or in any other manner permitted by law and in connection therewith to assume any or all of the bonds, mortgages, leases, contracts, indebtedness, liabilities, and obligations of any such corporation.

(c) To organize, incorporate, reorganize, merge, consolidate, and finance any corporation engaged or formed for the purpose of engaging in transportation business as defined in paragraph (b) hereof and to underwrite, subscribe for, and endorse the bonds, stocks, securities, debentures, notes, or undertakings of any such corporations and to make any guaranty in connection therewith or otherwise for the payment of money or for the performance of any obligation or undertaking and to do any and all things necessary or convenient to carry out of such purposes into effect.

(d) To render managerial, supervisory, accounting, and other services to corporations engaged in transportation business as defined in paragraph (b) hereof, provided that nothing contained in this paragraph or any other paragraph in this Article Third shall be construed to authorize or empower this corporation to transport or undertake or engage in the business of transporting passengers or property for the general public, either for compensation or otherwise.

(e) To acquire by purchase, lease, or otherwise, take, own, hold, sell, exchange, transfer, lease, repair, maintain, improve, mortgage, and in any other manner deal in and deal with real property, mixed and personal property, wherever situated, whether within or without the State of Delaware.

(f) To purchase or otherwise acquire, hold, use, sell, or in any manner dispose of and to grant licenses or other rights therein and in any manner deal with patents, inventions, improvements, processes, trade-marks, trade names, rights and licenses secured under letters patent, copyrights, or otherwise.

(g) To enter into, make and perform contracts of every kind for any lawful purpose, without limit as to amount, with any person, firm, association, or corporation, town, city, county, state, territory, or government.

(h) To draw, make, accept, endorse, discount, execute, and issue promissory notes, drafts, bills of exchange, warrants, debentures, and other negotiable or transferable instruments.

(i) To issue bonds, debentures, or obligations and to secure the same by mortgage, pledge, deed of trust, or otherwise.

(j) To purchase, hold, and reissue the shares of its capital stock, bonds, and other obligations of this Corporation from time to time to such extent and in such manner and upon such terms as its Board of Directors shall determine, provided that this corporation shall not use any of its funds or property for the purchase of its own shares of stock when such use would cause any impairment of the capital of this Corporation except as otherwise permitted by law and provided, further, that shares of its own capi-

tal stock belonging to this Corporation shall not be voted upon directly or indirectly.

(k) To carry on any or all of its operations and business and to promote its objects within the State of Delaware or elsewhere, without restriction as to place or amount.

(l) To carry on any other business in connection therewith.

(m) To do any or all of the things set forth to the same extent as natural persons might or could do and in any part of the world as principals, agents, contractors, trustees, or otherwise, alone or in company with others.

The foregoing clauses shall be construed both as objects and powers, and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of the Corporation, and are in furtherance of, and in addition to, and not in limitation of the general powers conferred by the laws of the State of Delaware.

It is the intention that the purposes, objects and powers specified in this Article Third and all subdivisions thereof shall, except as otherwise expressly provided, in nowise be limited or restricted by reference to or inference from the terms of any other clause or paragraph of this Article, and that each of the purposes, objects and powers specified in this Article Third shall be regarded as independent purposes, objects and powers.

Fourth. The total number of shares of stock which the Corporation shall have authority to issue is 2,065,000 shares of which 65,000 shares of the par value of $100 each are Preferred Stock and 2,000,000 shares of the par value of $1 each are Common Stock.

The designations and the powers, preferences, and rights, and the qualifications, limitations, or restrictions thereof which are permitted by the provisions of Section 13 of the General Corporation Law of the State of Delaware in respect of the various classes of stock of the Corporation and the fixing of which by this Agreement of Merger is desired and, as to those which are not fixed by this Agreement of Merger, a statement of an express grant of authority to the Board of Directors to fix by resolution or resolutions such thereof as may be desired but are not fixed by this Agreement of Merger, are as follows:

A. Issuance and Series of Preferred Stock.—Forty-seven thousand five hundred (47,500) shares of the Preferred Stock herein authorized shall be designated "$4 Cumulative Preferred Stock, Series A" and the $4 Cumulative Preferred Stock, Series A shall have the powers, preferences, and rights, and the qualifications, limitations, or restrictions thereof, fixed by this Agreement of Merger.

The remaining shares of Preferred Stock hereby authorized, other than the $4 Cumulative Preferred Stock, Series A, may be issued in one or more series (provided that all shares of any one series shall be alike in every particular) and the shares of each series shall have such voting powers, designations, preferences, and relative, participating, optional, or other special rights, and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions providing for the issue of such stock adopted by the Board of Directors pursuant to the authority to do so which is hereby expressly vested in them; provided, that no such resolution or resolutions shall alter or abridge the voting powers hereby conferred upon the holders of Preferred Stock of any series, and provided further that, so long as any shares of $4 Cumulative Preferred Stock, Series A are outstanding, the Corporation shall not issue any shares of Preferred Stock entitling the holders thereof to receive annual dividends of more than $4 a share without first obtaining the affirmative vote of the holders of at least a majority of the $4 Cumulative Preferred Stock, Series A at the time outstanding, voting as a class, given in person or by proxy, either in writing or at a meeting called for that purpose.

Any of the remaining authorized shares of Preferred Stock in excess of the 47,500 shares of $4 Cumulative Preferred Stock, Series A hereinabove provided for may, in lieu of being issued in series as aforesaid, be issued as additional $4 Cumulative
61 Preferred Stock, Series A, having the same powers, preferences, and rights, and the same qualifications, limitations, or restrictions thereof, as the 47,500 shares of $4 Cumulative Preferred Stock, Series A hereinabove provided for.

B. Dividends.—The holders of the $4 Cumulative Preferred Stock, Series A shall be entitled to receive, when and as declared by the Board of Directors out of any assets or funds of the Corporation legally available therefor, cumulative cash dividends at the fixed rate of $4 per share per year, and no more, payable quarterly on the first days of January, April, July, and October in each year.

Dividends on the shares of $4 Cumulative Preferred Stock, Series A herein authorized shall be paid before any dividend shall be paid or other distributions made to the holders of Common Stock, and said dividends shall be cumulative from July 1, 1946.

When full cumulative dividends for all past dividend periods and for the then current quarterly dividend period shall have been paid upon, or declared and set apart for, all shares of the $4 Cumulative Preferred Stock, Series A then issued and outstanding, and when the dividend requirements of any other outstanding series of Preferred Stock shall have been satisfied, the Board of Direc-

tors may declare and the Corporation may pay, out of assets or funds of the Corporation legally available therefor, dividends upon the outstanding Common Stock.

C. Liquidation.—In the event of any liquidation, dissolution or winding up of the Corporation, the holders of $4 Cumulative Preferred Stock, Series A shall be entitled to receive, ratably and equally, out of the assets of the Corporation available therefor, the sum of $100 per share plus an amount equal to the dividends accumulated, accrued, and unpaid thereon (whether or not such dividends have been earned) before any payment shall be made or any assets distributed to the holders of the Common Stock.

After the satisfaction of the rights of the holders of the $4 Cumulative Preferred Stock, Series A and the holders of any other series of Preferred Stock, the assets of the Corporation available therefor shall be distributed ratably and equally among the holders of the Common Stock.

D. Voting Rights.—Until default by the Corporation in the payment of four quarterly dividend payments on the outstanding Preferred Stock or any series thereof, the holders of the Common Stock shall have exclusive voting power for all purposes of the Corporation, except as otherwise required by law.

In the event of default by the Corporation in the payment of four quarterly dividend payments on the outstanding Preferred Stock or any series thereof, then, until all arrears in dividends on the Preferred Stock shall have been paid and the full dividend for the then current dividend period shall have been declared and paid or set apart for payment, the holders of the Preferred Stock voting separately as a class, with one vote for each share, shall have the right to elect one less than a majority of the board of directors.

In the event of default by the Corporation in the payment of eight quarterly dividend payments on the outstanding Preferred Stock or any series thereof, then, until the arrears in dividends shall have been reduced to the point at which only four quarterly dividend payments on the outstanding Preferred Stock or any series thereof remain in arrears, the holders of the Preferred Stock voting separately as a class, with one vote for each share, shall have the right to elect a majority of the board of directors. When the dividends in arrears have been reduced until only four quarterly dividend payments on the outstanding Preferred Stock or any series thereof remain in arrears, the holders of the Preferred Stock shall again have the right to elect only one less than a majority of the board of directors. When all the dividends in arrears have been paid and the full dividend on the Preferred Stock for the then current dividend period shall have been declared
62 and paid or set apart for payment, the holders of the Com-

mon Stock shall again have exclusive voting power for all purposes of the Corporation, except as otherwise required by law. Vacancies, however occasioned, among the Directors elected exclusively by the holders of the Preferred Stock or exclusively by the holders of the Common Stock shall, if not filled by the stockholders, be filled by the remainder of the Directors elected by the particular class of stock whose representation was so reduced.

Upon the happening of any event which changes the right of either class of stockholders to vote for directors, a meeting of the holders of all stock entitled immediately after the happening of such event to vote for the election of any director shall be held, upon notice similar to that provided by the bylaws for an annual meeting, upon call by the holders of not less than 1,000 shares of any class of stock then entitled to vote for the election of any director or upon call by the Secretary of the Corporation, at the request in writing of the holders of not less than 1,000 shares of any class of stock then entitled to vote for the election of any director, and at such meeting a new Board of Directors shall be elected to act until the next annual meeting of stockholders.

E. Redemption.—The shares of the $4 Cumulative Preferred Stock, Series A shall be subject to redemption, in whole or in part, at any time or from time to time, at the option of the Corporation, upon the payment in cash of $103 per share and an amount equal to the dividends accumulated, accrued and unpaid thereon (whether or not such dividends have been earned). If less than all the outstanding shares of $4 Cumulative Preferred Stock, Series A are to be redeemed, the shares to be redeemed shall be determined by lot or pro rata or in any other manner determined by the Board of Directors. Written notice of the election of the Corporation to redeem shares of $4 Cumulative Preferred Stock, Series A shall be mailed to the holders of record of the shares to be redeemed at least thirty days prior to the redemption date. From and after the date fixed in such notice as the redemption date (unless the Corporation shall default in the payment of the redemption price), all dividends on the shares so called for redemption shall cease to accrue and all the rights of the holders thereof as stockholders of the Corporation, except the right to receive the redemption price, shall cease and determine and such shares shall not thereafter be transferred (except with the consent of the Corporation) on the books of the Corporation, and such shares shall not be deemed to be outstanding for any purpose whatever. However, at any time after the mailing of any notice of redemption, the Corporation may deposit the redemption price of the shares to be redeemed with a bank or trust company in the

Borough of Manhattan, The City of New York, or with a bank or trust company, in Chicago, Illinois, as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed, and from and after the making of such deposit the shares of Preferred Stock designated for redemption shall not be deemed outstanding for any purpose whatever and the rights of the holders of such shares shall be limited solely to the right to receive the redemption price of such shares on or after the redemption date fixed by the notice, upon the surrender of the certificate or certificates representing such shares to the Corporation at the principal office of the bank or trust company with which such trust fund has been deposited.

Fifth. No holder of stock of any class shall have any right as such holder to purchase or subscribe for any stock of any class or any obligations convertible into any stock of any class which the Corporation may at any time issue or sell, and all such stock or obligations may be issued and disposed of by the Board of Directors to such persons, firms, corporations and associations and for such lawful considerations and on such terms as the Board of Directors in its discretion may determine, without first offering the same or any part thereof to the stockholders or any class of stockholders.

Sixth. The Corporation is to have perpetual existence.

63 Seventh. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

Eighth. The number of directors of the Corporation shall be fixed by, or in the manner provided in, the bylaws of the Corporation, and may be altered from time to time only as may be provided in the bylaws. Any director may be removed by a majority vote of the stockholders at any meeting of stockholders for any cause deemed sufficient by such meeting. Directors of the Corporation need not be stockholders therein.

Ninth. In furtherance but not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized:

(a) To fix the amount to be reserved as working capital and, subject to the limitations herein contained, to authorize and cause to be executed mortgages and liens upon the property and franchises of the Corporation;

(b) To make, amend, alter, change, add to, or repeal the bylaws of the Corporation in any manner not in conflict with this Agreement of Merger, and without any action on the part of the stockholders. The bylaws made by the directors may be amended,

altered, changed, added to, or repealed by the stockholders in any manner not in conflict with this Agreement of Merger;

(c) By resolution passed by a majority of the whole Board, to designate three or more directors to constitute an Executive Committee, which committee shall have and exercise (except when the Board of Directors shall be in session) such powers and rights of the Board of Directors in the management of the business and affairs of the Corporation as may be provided in the by-laws or in said resolution, and shall have power to authorize the seal of the Corporation to be affixed to all papers which may require it;

(d) To sell, assign, convey, or otherwise dispose of a part of the property, assets, and effects of the Corporation less than the whole or less than substantially the whole thereof, on such terms and conditions and for such consideration, which may be in whole or in part shares of stock in, and/or other securities of, any other corporation or corporations, as they shall deem advisable, without the assent of the stockholders in writing or otherwise, and also to sell, assign, transfer, convey, and otherwise dispose of the whole or substantially the whole of the property, assets, effects, franchises, and good will of the Corporation, on such terms and conditions and for such consideration, which may be in whole or in part shares of stock in, and/or other securities of, any other corporation or corporations, as they shall deem advisable, but only with the written consent or pursuant to the affirmative vote of the holders of at least a majority in amount of the stock then having voting power at the time issued and outstanding, but in any event not less than the amount required by law.

All of the power of the Corporation, insofar as the same lawfully may be vested by this Agreement of Merger in the Board of Directors, and except as otherwise provided herein, are hereby conferred upon the Board of Directors of the Corporation.

Tenth. Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 3883 of the Revised Code of 1915 of said State, or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 43 of the General Corporation Law of the State of Delaware, order a meeting of the creditors or class

of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said Court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the Court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

Eleventh. Both stockholders and directors shall have power, if the bylaws so provide, to hold their meetings, and to have one or more offices within or without the State of Delaware, and to keep the books of the Corporation (subject to the provisions of applicable statutes) outside of the State of Delaware at such places as may be from time to time designated by the Board of Directors.

Twelfth. No contract or other transaction between the Corporation and any other firm or corporation shall be affected or invalidated by reason of the fact that any one or more of the directors or officers of the Corporation is or are interested in, or is a member, stockholder, director, or officer or are members, stockholders, directors, of officers of such other firm or corporation; and any director or office or officers, individually or jointly, may be a party or parties to, or may be interested in, any contract or transaction of the Corporation or in which the Corporation is interested, and no contract, act or transaction of the Corporation with any person or persons, firm, association, or corporation, shall be affected or invalidated by reason of the fact that any director or directors or officer or officers of the Corporation, is a party or are parties to, or interested in, such contract, act or transaction, or in any way connected with such person or persons, firm, association, or corporation, and each and every person who may become a director or officer of the Corporation is hereby relieved from any liability that might otherwise exist from this contracting with the Corporation for the benefit of himself or any firm, association, or corporation in which he may be in anywise interested.

Thirteenth: The Corporation reserves the right to amend, alter, change, or repeal any provision contained in this Agreement of Merger, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

3. The manner of converting the outstanding shares of the capital stock of each of the constituent corporations into shares of the Corporation shall be as follows:

Forthwith upon the filing and recording of this Agreement of Merger as required by law:

(a) Each share of $5 Cumulative Preferred Stock, Series A and each share of $5 Cumulative Preferred Stock, Series B of American City Lines, Inc. (except any such shares held by National City Lines, Inc., American City Lines, Inc., or Andover Finance Company) shall be converted into one share of $4 Cumulative Preferred Stock, Series A of the Corporation, and each holder of shares of $5 Cumulative Preferred Stock, Series A or $5 Cumulative Preferred Stock, Series B of American City Lines, Inc., upon the surrender to the Corporation of one or more certificates for such shares for cancellation, shall be entitled to receive one or more certificates for a number of shares of $4 Cumulative Preferred Stock, Series A of the Corporation equal to the number of shares represented by the certificates so surrendered for cancellation by such holder; and dividends upon shares of $4 Cumulative Preferred Stock, Series A of the Corporation so issued shall accrue from July 1, 1946, the dividend payable July 1, 1946, on the $5 Cumulative Preferred Stock, Series A and $5 Cumulative Preferred Stock, Series B of American City Lines, Inc., having already been declared.

(b) Each share of Common Stock of said American City Lines, Inc. (except any such shares held by National City Lines, Inc., American City Lines, Inc., or Andover Finance Company) shall be converted into .8684256 shares of the Common Stock of the
65 Corporation, and each holder of shares of the Common Stock of American City Lines, Inc., upon the surrender to the Corporation of one or more certificates for such shares for cancellation, shall be entitled to receive one or more certificates for a number of shares of Common Stock of the Corporation equal to the number of shares represented by the certificates so surrendered for cancellation by such holder multiplied by .8684256. On such conversion and surrender, no certificates for fractions of a share of Common Stock of the Corporation shall be issued but a cash payment of the value of any fraction of a share issuable shall be made and for this purpose the value of such fraction shall be computed on the basis of the last reported sale price of Common Stock of National City Lines, Inc. on the New York Curb Exchange on the date of filing of this Agreement of Merger in the office of the Secretary of State or, if no sale shall take place on that day, on the next preceding day on which a sale shall have taken place.

(c) Each share of Common Stock of said Andover Finance Company (except any such shares held by National City Lines, Inc., American City Lines, Inc., or Andover Finance Company) shall be converted into one share of the Common Stock of the Corporation and each holder of shares of the Common Stock of Andover Finance Company, upon the surrender to the Corporation of one or more certificates for such shares for cancellation, shall be entitled to receive one or more certificates for a number of shares of Common Stock of the Corporation equal to the number of shares represented by the certificates so surrendered for cancellation by such holder. On such conversion and surrender no certificates for fractions of a share of Common Stock of the Corporation shall be issued, but a cash payment of the value of any fraction of a share issuable shall be made and for this purpose the value of such fraction shall be computed on the basis of the last reported sale price of Common Stock of National City Lines, Inc., on the New York Curb Exchange on the date of filing this Agreement of Merger in the Office of the Secretary of State, or if no sale shall take place on that day, on the next preceding day on which a sale shall have taken place. The 3,442 shares of Preferred Stock of Andover Finance Company, which are held by other parties hereto, shall be canceled.

(d) Each share of the existing Common Stock of the Corporation shall be converted into two shares of its new Common Stock having a par value of $1 per share, and each holder of shares of existing Common Stock of the Corporation, upon the surrender to the Corporation of one or more certificates for such shares for cancellation, shall be entitled to receive one or more certificates for twice the number of shares of new Common Stock of the Corporation represented by the certificates so surrendered for cancellation by such holder.

(e) If at the time this Agreement of Merger shall become effective any of the parties hereto shall own any of the outstanding shares of capital stock of any other party hereto, such shares shall not be converted or transferred nor shall the beneficial interest therein pass to National City Lines, Inc., but such shares of stock shall forthwith be surrendered for cancellation and any shares of stock of the Corporation issuable in exchange therefor in accordance with this agreement shall have the status of authorized but unissued stock of the Corporation.

4. The following are terms and conditions of this merger:

Until altered, amended, or repealed as therein provided, the bylaws of National City Lines, Inc., as in effect at the date when

this agreement becomes effective, shall be the bylaws of the Corporation.

The first Board of Directors of the Corporation after the date when the merger provided for herein shall become effective shall be the Directors of National City Lines, Inc. in office at the date when this agreement becomes effective.

The first annual meeting of the stockholders of the Corporation held after the date when this agreement becomes effective shall be the annual meeting provided for by the bylaws for the year 1947.

66 The officers of the Corporation, who shall hold the offices set opposite their names from and after the date when this agreement shall become effective and until the first meeting of the Board of Directors to be held after the next annual meeting of stockholders, are as follows:

President, E. Roy Fitzgerald, 20 N. Wacker Drive, Chicago, Illinois.

Vice President, Foster G. Beamsley, 20 N. Wacker Drive, Chicago, Illinois.

Vice President and Treasurer, Ed. Fitzgerald, 20 N. Wacker Drive, Chicago, Illinois.

Vice President and General Manager, W. R. Fitzgerald, 20 N. Wacker Drive, Chicago, Illinois.

Vice President and Controller, E. V. Anderson, 20 N. Wacker Drive, Chicago, Illinois.

Vice President, V. B. Churm, 20 N. Wacker Drive, Chicago, Illinois.

Secretary and Assistant Treasurer, J. M. Schramm, 20 N. Wacker Drive, Chicago, Illinois.

General Attorney, Robert H. Farrell, 20 N. Wacker Drive, Chicago, Illinois.

Assistant Secretary, G. L. Walker, 20 N. Wacker Drive, Chicago, Illinois.

The Corporation shall pay all expenses of carrying this Agreement of Merger into effect and of accomplishing the merger.

Upon the date when this agreement shall become effective, the separate existences of American City Lines, Inc., and of Andover Finance Company shall cease and the constituent corporations shall be merged into National City Lines, Inc., the surviving corporation, in accordance with the provisions of this agreement. National City Lines, Inc. shall possess all the rights, privileges, powers, and franchises, as well of a public as of a private nature,

and be subject to all the restrictions, disabilities, and duties of each of the corporations, parties to this agreement, and all and singular the rights, privileges, powers, and franchises of each of said corporations and all property, real, personal, and mixed, and all debts due to each of such corporations shall be vested in the surviving corporation; and all property, rights and privileges, powers and franchises and all and every other interest shall be thereafter as effectually the property of the surviving corporation as they were of the respective constituent corporations, and the title to any real estate, whether by deed or otherwise, vested in either of said corporations, parties hereto, shall not revert or be in any way impaired by reason of this merger, provided that all rights of creditors and all liens upon the property of either of said corporations, parties hereto, shall be preserved unimpaired, and all debts, liabilities, and duties of American City Lines, Inc., and of Andover Finance Company shall thenceforth attach to the said surviving corporation and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

If at any time the Corporation shall consider or be advised that any further assignments or assurances in law or any other things are necessary or desirable to vest in the Corporation according to the terms hereof the title to any property or rights of American City Lines, Inc., and of Andover Finance Company, the proper officers and directors of American City Lines, Inc. and of Andover Finance Company, as the case may be, shall and will execute and make all such proper assignments and assurances and do all things necessary or proper to vest title in such property or rights in the Corporation and otherwise to carry out the purposes of this Agreement of Merger.

67 5. This Agreement of Merger shall be filed in the office of the Secretary of State of Delaware and a copy thereof, duly certified by the Secretary of State, shall be recorded in the office of the Recorder of Deeds for New Castle County, and shall be effective upon the filing thereof in the office of the Secretary of State of Delaware.

In witness whereof, the parties to this agreement, pursuant to authority duly given by their respective Boards of Directors, have caused these presents to be executed by National City Lines, Inc., American City Lines, Inc., and Andover Finance Company and their respective corporate seals to be hereto affixed, and to be

executed by a majority of the Directors of each of the parties hereto.

NATIONAL CITY LINES, INC.,
By E. ROY FITZGERALD,
President.

E. ROY FITZGERALD,
F. G. BEAMSLEY,
ED. FITZGERALD,
FRANK A. WILLARD,
C. FRANK REAVIS,
ROBERT H. FARRELL,
Constituting a majority of the Board of Directors of National City Lines, Inc.

Attest:
[SEAL] J. M. SCHRAMM, *Secretary.*

AMERICAN CITY LINES, INC.,
By E. ROY FITZGERALD,
Chairman of the Board.

E. ROY FITZGERALD,
JOHN L. WILSON,
F. G. BEAMSLEY,
ED. FITZGERALD,
FRANK A. WILLARD,
ROBERT H. FARRELL,
Constituting a majority of the Board of Directors of American City Lines, Inc.

Attest:
[SEAL] J. M. SCHRAMM, *Secretary.*

68 ANDOVER FINANCE COMPANY,
By E. ROY FITZGERALD,
President.

E. ROY FITZGERALD,
F. G. BEAMSLEY,
ED FITZGERALD,
J. M. SCHRAMM,
G. L. WALKER,
Constituting a majority of the Board of Directors of Andover Finance Company.

Attest:
[SEAL] J. M. SCHRAMM, *Secretary.*

I, J. M. Schramm, Secretary of National City Lines, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certify as such Secretary and under the seal of said corporation that the Agreement of Merger to which this

certificate is attached, after having been first duly signed on behalf of said corporation and by a majority of the directors thereof and having been signed by American City Lines, Inc., and Andover Finance Company, both corporations of the State of Delaware, and by a majority of the directors of American City Lines, Inc., and Andover Finance Company, was duly submitted to the stockholders of said National City Lines, Inc. at a special meeting of said stockholders, called and held separately from the meeting of stockholders of any other corporation, after at least twenty days' notice by mail and notice by publication as provided by Section 59 of the General Corporation Law of the State of Delaware, on the 11th day of July 1946, for the purpose of considering and taking action upon the proposed Agreement of Merger; that 600,000 shares of stock of said corporation, all Common Stock, were on said date issued and outstanding; that the holders of 468,043 shares voted by ballot in favor of the approval and the holders of 280 shares voted by ballot against the approval of the proposed Agreement of Merger, the said affirmative vote representing at least two-thirds of the total number of shares of the outstanding capital stock of said corporation, and that thereby the Agreement of Merger was at said meeting duly adopted as the act of the stockholders of said National City Lines, Inc. and the duly adopted agreement of said corporation.

Witness my hand and the seal of said National City Lines, Inc. on this 11th day of July 1946.

[SEAL] J. M. SCHRAMM.

69 I, J. M. Schramm, Secretary of American City Lines, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certify as such Secretary and under the seal of said corporation that the Agreement of Merger to which this certificate is attached, after having been first duly signed on behalf of said corporation and by a majority of the directors thereof and having been signed by National City Lines, Inc., and Andover Finance Company, both corporations of the State of Delaware, and by a majority of the directors of National City Lines, Inc., and Andover Finance Company, was duly submitted to the stockholders of said American City Lines, Inc., at a special meeting of said stockholders, called and held separately from the meeting of stockholders of any other corporation, after at least twenty days' notice by mail and notice by publication as provided by Section 59 of the General Corporation Law of the State of Delaware on the 11th day of July 1946, for the purpose of considering and taking action upon the proposed Agreement of Merger; that 9,375 shares of the $5 Cumulative Preferred

Stock, Series A, 38,125 shares of $5 Cumulative Preferred Stock, Series B and 253,333 shares of Common Stock of said corporation were on said date issued and outstanding; that the holders of 9,375 shares of $5 Cumulative Preferred Stock, Series A, 38,125 shares of $5 Cumulative Preferred Stock, Series B and 253,333 shares of Common Stock voted by ballot in favor of the approval and the holders of no shares of $5 Cumulative Preferred Stock, Series A, no shares of $5 Cumulative Preferred Stock, Series B, and no shares of Common Stock voted by ballot against the approval of the proposed Agreement of Merger, the said affirmative vote representing at least two-thirds of the total number of shares of the outstanding capital stock of said corporation, and that thereby the Agreement of Merger was at said meeting duly adopted as the act of the stockholders of said American City Lines, Inc., and the duly adopted agreement of said corporation.

Witness my hand and the seal of said American City Lines, Inc., on this 11th day of July 1946.

[SEAL] J. M. SCHRAMM.

I, J. M. Schramm, Secretary of Andover Finance Company, a corporation organized and existing under the laws of the State of Delaware, hereby certify as such Secretary and under the seal of said corporation that the Agreement of Merger to which this certificate is attached, after having been first duly signed on behalf of said corporation and by a majority of the directors thereof and having been signed by National City Lines, Inc. and American City Lines, Inc., both corporations of the State of Delaware, and by a majority of the directors of National City Lines, Inc. and American City Lines, Inc., was duly submitted to the stockholders of said Andover Finance Company at a special meeting of said stockholders, called and held separately from the meeting of stockholders of any other corporation, after at least twenty days' notice by mail and notice by publication as provided by Section 59 of the General Corporation Law of the State of Delaware on the 11th day of July 1946 for the purpose of considering and taking action upon the proposed Agreement of Merger; that 3,442 shares of Preferred Stock and 40,587½ shares of Common Stock of said corporation were on said date issued and outstanding; that the holders of 3,442 shares of Preferred Stock, and 40,237 shares of Common Stock voted by ballot in favor of the approval and the holders of no shares of Preferred Stock and no shares of Common Stock voted by ballot against the approval of the proposed Agreement of Merger, the said affirmative vote representing at least two-thirds of the total number of shares of the outstanding capital stock of

said corporation, and that thereby the Agreement of Merger was at said meeting duly adopted as the act of the stockholders of said Andover Finance Company and the duly adopted agreement of said corporation.

Witness my hand and the seal of said Andover Finance Company on this 11th day of July 1946.

[SEAL] J. M. SCHRAMM.

70 The foregoing Agreement of Merger having been executed by the parties thereto and by a majority of the Board of Directors of each corporation a party thereto, and having been adopted separately by the stockholders of each corporation a party thereto, in accordance with the provisions of the General Corporation Law of the State of Delaware, and that fact having been certified on said Agreement of Merger by the Secretary or Assistant Secretary of each corporation a party thereto, the President or Vice President and the Secretary or an Assistant Secretary of each corporation a party thereto do now hereby execute the said Agreement of Merger, under the corporate seals of their respective corporations, by authority of the directors and stockholders thereof, as the respective act, deed and agreement of each of said corporation, on this 11th day of July 1946.

NATIONAL CITY LINES, INC.,
By E. ROY FITZGERALD,
President.
J. M. SCHRAMM,
Secretary.

Attest:
[SEAL] GREYDON L. WALKER, *Assistant Secretary.*

AMERICAN CITY LINES, INC.,
By JOHN L. WILSON,
President.
J. M. SCHRAMM,
Secretary.

Attest:
[SEAL] GREYDON L. WALKER, *Assistant Secretary.*

ANDOVER FINANCE COMPANY,
By E. ROY FITZGERALD,
President,
J. M. SCHRAMM,
Secretary.

Attest:
[SEAL] GREYDON L. WALKER, *Assistant Secretary.*

71 STATE OF ILLINOIS,
County of Cook, ss:

Be it remembered that on this 11th day of July A. D. 1946, personally came before me Mary E. Joyce, a notary public in and for the County and State aforesaid, E. Roy Fitzgerald, President of National City Lines, Inc., a corporation of the State of Delaware and one of the corporations described in and which executed the foregoing Agreement of Merger, known to me personally to be such and he, the said E. Roy Fitzgerald, as such President, duly executed said Agreement of Merger before me and acknowledged said Agreement of Merger to be the act, deed and agreement of said National City Lines, Inc.; that the signatures of said President and said J. M. Schramm, Secretary of said corporation, to said foregoing Agreement of Merger are in the handwriting of said President and Secretary of said National City Lines, Inc., and that the seal affixed to said Agreement of Merger is the common corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and seal of office the day and year aforesaid.

MARY E. JOYCE, *Notary Public.*

Mary E. Joyce, Notary Public, Cook County, Illinois.

72 STATE OF ILLINOIS,
County of Cook, ss:

Be it remembered that on this 11th day of July A. D. 1946, personally came before me Mary E. Joyce, a notary public in and for the County and State aforesaid, John L. Wilson, President of American City Lines, Inc., a corporation of the State of Delaware and one of the corporations described in and which executed the foregoing Agreement of Merger, known to me personally to be such and he, the said John L. Wilson, as such President, duly executed said Agreement of Merger before me and acknowledged said Agreement of Merger to be the act, deed and agreement of said American City Lines, Inc.; that the signatures of said President and said J. M. Schramm, Secretary of said corporation, to said foregoing Agreement of Merger are in the handwriting of said President and Secretary of said American City Lines, Inc., and that the seal affixed to said Agreement of Merger is the common corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and seal of office the day and year aforesaid.

MARY E. JOYCE, *Notary Public.*

Mary E. Joyce, Notary Public, Cook County, Illinois.

STATE OF ILLINOIS,
County of Cook, ss:

Be it remembered that on this 11th day of July A. D. 1946, personally came before me Mary E. Joyce, a notary public in and for the County and State aforesaid, E. Roy Fitzgerald, President of Andover Finance Company, a corporation of the State of Delaware and one of the corporations described in and which executed the foregoing Agreement of Merger, known to me personally to be such and he, the said E. Roy Fitzgerald, as such President, duly executed said Agreement of Merger before me and acknowledged said Agreement of Merger to be the act, deed and agreement of said Andover Finance Company; that the signatures of said President and said J. M. Schramm, Secretary of said corporation, to said foregoing Agreement of Merger are in the handwriting of said President and Secretary of said Andover Finance Company, and that the seal affixed to said Agreement of Merger is the common corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and seal of office the day and year aforesaid.

MARY E. JOYCE, *Notary Public.*

Mary E. Joyce, Notary Public, Cook County, Illinois.

73 STATE OF DELAWARE,
New Castle County, ss:

I, Burton S. Heal, Recorder of Deeds for New Castle County, Delaware, do hereby certify that Certified Copy of Certificate of Agreement of Merger between the "National City Lines, Inc.," "American City Lines, Inc.," and "Andover Finance Company," under the name of "National City Lines, Inc." as received and filed in the office of the Secretary of State the fifteenth day of July A. D. 1946, was received for record in this office on July 15, 1946, and the same appears of record in the Recorder's Office for said County in Incorporation Record H, Volume 52, Page 416, &c.

Witness my hand and Official Seal, this Twenty-third day of April A. D. 1947.

[SEAL] BURTON S. HEAL, *Recorder.*

74 THE STATE OF DELAWARE,
Kent County, ss:

I, Frank P. Walker, Recorder of Deeds for Kent County, Delaware, do hereby certify that National City Lines, Inc., Agreement of Merger Between National City Lines, Inc., American City Lines, Inc., and Andover Finance Company, was received for record in this office on July 15 A. D. 1946, and the same appears

of record in the Recorder's Ojce for said County in Corporation Record P, Vo'ume 19, Page 54, &c.

Witness my hand and Official Seal, this 23d day of April A. D. 1947.

[SEAL] FRANK P. WALKER, *Recorder.*

75 STATE OF DELAWARE

OFFICE OF SECRETARY OF STATE

I, William J. Storey, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Agreement of Merger between the "National City Lines, Inc.," "American City Lines, Inc.," and "Andover Finance Company," under the name of "National City Lines, Inc.," as received and filed in this office the fifteenth day of July A. D. 1946, at 10:30 o'clock A. M.

In testimony whereof, I have hereunto set my hand and official seal, at Dover, this seventh day of August in the year of our Lord one thousand nine hundred and forty-six.

[SEAL] WILLIAM J. STOREY,
Secretary of State.

76 *Exhibit B to Affidavit*

CERTIFICATE OF INCORPORATION OF AMERICAN CITY LINES, INC.

First. The name of the corporation is American City Lines, Inc.

Second. Its principal office in the State of Delaware is located at No. 100 West Tenth Street, in the City of Wilmington, County of New Castle. The name and address of its resident agent, is The Corporation Trust Company, No. 100 West Tenth Street, Wilmington, Delaware.

Third. The nature of the business, or objects or purposes to be transacted, promoted, or carried on are:

To subscribe for, or cause to be subscribed for, buy, own, hold, purchase, receive, or acquire, and to sell, negotiate, guarantee, assign, deal in, exchange, transfer, mortgage, pledge, or otherwise dispose of, shares of the capital stock, scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, acceptances, drafts, and evidences of indebtedness issued or created by any government or by any political subdivision thereof, or by any other corporations, joint stock companies, or associations, whether public, private, or municipal, or any corporate body, and while the owner thereof to possess and to exercise in respect thereof all the rights, powers, and privileges of ownership, including the right to vote thereon; to guarantee the payment of dividends on any

shares of the capital stock of any of the corporations, joint stock companies, or associations in which this Corporation has or may at any time have an interest, and to become surety in
77 respect of, endorse, or otherwise guarantee the payment of the principal of or interest on any scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, drafts, bills of exchange, or evidences of indebtedness issued or created by any such corporations, joint stock companies, or associations; to become surety for or guarantee the carrying out and performance of any and all contracts, leases, and obligations of every kind of any corporations, joint stock companies, or associations, and in particular of any corporation, joint stock cmpany, or association any of whose shares, scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, drafts, bills of exchange, or evidences of indebtedness, are at any time held by or for this Corporation, and to do any acts or things designed to protect, preserve, improve, or enhance the value of any such shares, scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, drafts, bills of exchange, or evidences of indebtedness.

To purchase or otherwise acquire, own, and dispose of any part or all of the capital stock and other securities of any corporation engaged in the transportation of passengers by omnibuses, streetcars, trackless trolleys, or other vehicles, whether propelled by gas, electricity, or other motive power, on and over streets, roads, and highways within and without cities, villages, and other municipal corporations, and over private rights of way, and to make payment therefor by the issuance of its capital stock of any class, bonds, debentures, and notes, and other obligations or in any other manner permitted by law and in connection therewith to assume any or all of the bonds, mortgages, leases, contracts, indebtedness, liabilities, and obligations of any such corporation.

78 To organize, incorporate, reorganize, merge, consolidate, and finance any corporation engaged or formed for the purpose of engaging in transportation business as defined in paragraph (b) hereof and to underwrite, subscribe for, and endorse the bonds, stocks, securities, debentures, notes, or undertakings of any such corporations and to make any guaranty in connection therewith or otherwise for the payment of money or for the performance of any obligation or undertaking and to do any and all things necessary or convenient to carry any of such purposes into effect.

To render managerial, supervisory, accounting, and other services to corporations engaged in transportation business as defined in paragraph (b) hereof, provided that nothing contained in this paragraph or any other paragraph in this Article Third shall be

construed to authorize or empower this corporation to transport or undertake or engage in the business of transporting passengers or property for the general public, either for compensation or otherwise.

To acquire by purchase, lease, or otherwise, take, own, hold, sell, exchange, transfer, lease, repair, maintain, improve, mortgage, and in any other manner deal in and deal with real property, mixed and personal property, wherever situated, whether within or without the State of Delaware.

To purchase or otherwise acquire, hold, use, sell, or in any manner dispose of and to grant licenses or other rights therein and in any manner deal with patents, inventions, improvements, processes, trade-marks, trade names, rights, and licenses secured under letters patent, copyrights, or otherwise.

79 To enter into, make, and perform contracts of every kind for any lawful purpose, without limit as to amount, with any person, firm, association, or corporation, town, city, county, state, territory, or government.

To draw, make, accept, endorse, discount, execute, and issue promissory notes, drafts, bills of exchange, warrants, debentures, and other negotiable or transferable instruments.

To issue bonds, debentures, or obligations and to secure the same by mortgage, pledge, deed of trust, or otherwise.

To purchase, hold, and reissue the shares of its capital stock, bonds, and other obligations of this Corporation from time to time to such extent and in such manner and upon such terms as its Board of Directors shall determine, provided that this corporation shall not use any of its funds or property for the purchase of its own shares of stock when such use would cause any impairment of the capital of this Corporation except as otherwise permitted by law and provided, further, that shares of its own capital stock belonging to this Corporation shall not be voted upon directly or indirectly.

To carry on any or all of its operations and business and to promote its objects within the State of Delaware or elsewhere, without restriction as to place or amount.

To carry on any other business in connection therewith.

To do any or all of the things set forth to the same extent as natural persons might or could do and in any part of the world as principals, agents, contractors, trustees, or otherwise, alone or in company with others.

The foregoing clauses shall be construed both as objects
80 and powers, and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of the Corporation, and are in furtherance of, and in addition to, and not in limita-

tion of the general powers conferred by the laws of the State of Delaware.

It is the intention that the purposes, objects, and powers specified in this Article Third and all subdivisions thereof shall, except as otherwise expressly provided, in nowise be limited or restricted by reference to or inference from the terms of any other clause or paragraph of this Article, and that each of the purposes, objects, and powers specified in this Article Third shall be regarded as independent purposes, objects, and powers.

Fourth. The total number of shares of stock which the corporation shall have authority to issue is two hundred (200); all of such shares shall be without par value.

Fifth. The minimum amount of capital with which the corporation will commence business is One Thousand Dollars ($1,000.00).

Sixth. The names and places of residence of the incorporators are as follows:

Names and Residences

C. S. Peabbles, Wilmington, Delaware; S. M. Brown, Wilmington, Delaware; Walter Lenz, Wilmington, Delaware.

81 Seventh. The corporation is to have perpetual existence.

Eighth. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

Ninth. In furtherance, and not in limitation of the powers conferred by statute, the board of directors is expressly authorized:

To make, alter, or repeal the bylaws of the corporation.

To authorize and cause to be executed mortgages and liens upon the real and personal property of the corporation.

To set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose or to abolish any such reserve in the manner in which it was created.

By resolution or resolutions, passed by a majority of the whole board to designate one or more committees, each committee to consist of two or more of the directors of the corporation, which, to the extent provided in said resolution or resolutions or in the bylaws of the corporation, shall have and may exercise the powers of the board of directors in the management of the business, and affairs of the corporation, and may have power to authorize the seal of the corporation to be affixed to all papers which may

82 require it. Such committee or committees shall have such name or names as may be stated in the bylaws of the corporation or as may be determined from time to time by resolution adopted by the board of directors.

When and as authorized by the affirmative vote of the holders of a majority of the stock issued and outstanding having voting power given at a stockholders' meeting duly called for that pur-

pose, or when authorized by the written consent of the holders of a majority of the voting stock issued and outstanding, to sell, lease, or exchange all of the property and assets of the corporation, including its good will and its corporate franchises, upon such terms and conditions and for such consideration, which may be in whole or in part shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors shall deem expedient and for the best interests of the corporation.

The corporation may in its bylaws confer powers upon its board of directors in addition to the foregoing, and in addition to the powers and authorities expressly conferred upon it by statute.

Tenth. Meetings of stockholders may be held without the State of Delaware, if the bylaws so provide. The books of the corporation may be kept (subject to any provision contained in the statutes outside of the State of Delaware at such place or places as may be from time to time designated by the board of directors.

Eleventh. The corporation reserves the right to amend, alter, change, or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

83 We, the undersigned, being each of the incorporators hereinbefore named for the purpose of forming a corporation in pursuance of the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that the facts herein stated are true, and accordingly have hereunto set our hands and seals this 11th day of June A. D. 1946.

C. S. PEABBLES. [SEAL]
S. M. BROWN. [SEAL]
WALTER LENZ. [SEAL]

84 STATE OF DELAWARE,
County of New Castle, ss:

Be it remembered, That on this 11th day of June A. D. 1946, personally came before me, M. Ruth Mannering, a Notary Public for the State of Delaware, C. S. Peabbles, S. M. Brown, and Walter Lenz, all of the parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledged the said certificate to be the act and deed of the signers respectively and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.

M. RUTH MANNERING,
Notary Public.

M. Ruth Mannering, Notary Public. Appointed Feb. 9, 1945. State of Delaware. Term Two Years.

85 STATE OF DELAWARE

OFFICE OF SECRETARY OF STATE

I, William J. Storey, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Incorporation of the "American City Lines, Inc.," as received and filed in this office the fifteenth day of July A. D. 1946, at 10:30 o'clock A. M.

In testimony whereof, I have hereunto set my hand and official seal at Dover, this twentieth day of June in the year of our Lord one thousand nine hundred and forty-seven.

[SEAL] WILLIAM J. STOREY,
Secretary of State.

86 CERTIFIED COPY, CERTIFICATE OF INCORPORATION OF AMERICAN CITY LINES, INC.

87 In the District Court of the United States In and for the Southern District of California, Central Division.

O'MELVENY & MYERS
Title Insurance Building
433 SOUTH SPRING STREET, LOS ANGELES 13, CAL.

Received copy of the within Affidavit this 11 day of Aug. 1947.

HAIGHT, TRIPPET & SYVERTSON,
Attorney for Defendant.

Received copy of the within Affidavit this 11th day of August, 1947.

W. E. DIXON,
Attorney for U. S.

Received copy of the within Affidavits this 11th day of August, 1947.

COSGROVE, CLAYTON, CRAMER & DIETHER,
Attorneys for Deft. Gen. Motors.

Received copy of the within Affidavits this 11th day of August, 1947.

FINLAYSON, BENNETT & MORROW.

Received copy of the within Affidavits this 11th day of August, 1947.

WRIGHT & MILLIKAN,
J. M. JENSEN,
Attorneys for Deft. Mack Manufacturing Corporation.

Received copy of the within Affidavit this 11th day of August, 1947.

LAWLER, FELIX & HALL,
By HARRIET S. ELDER.

88 In the District Court of the United States for the Southern District of California, Central Division

[File endorsement omitted.]

Civil No. 6747-Y

[Title omitted.]

Notice of motions to dismiss, for more definite statement or for bill of particulars, and to quash, together with said motions, of defendants National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc.

Filed Aug. 11, 1947

Plaintiff and its Attorneys:

Please take notice that on September 15, 1947, at the hour of 10:00 o'clock A. M., or as soon thereafter as defendants' counsel may be heard, defendants National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc. (herein referred to as "said defendants") will individually move the above entitled Court in the court room of Honorable Leon R. Yankwich, Judge of said Court, in the United States Post Office and Court House Building, at Los Angeles, California, in accordance with Motion No. 1, Motion No. 2, and Motion No. 3, annexed hereto and made a part hereof. Said motions will be
89 made upon the grounds stated in each of said motions, respectively, and will be based upon the papers and records referred to in each of said motions, respectively.

Dated August 11, 1947.

O'MELVENY & MYERS,
PIERCE WORKS,
JACKSON W. CHANCE,
By Jackson W. Chance,
JACKSON W. CHANCE,
Attorneys for said Defendants.

90 Motion No. 1

Said defendants move to dismiss the Complaint on file in the above entitled action on the ground that this is not a con-

venient forum to try said action and that the most convenient forum therefor is the United States District Court for the Northern District of Illinois, Eastern Division (Chicago). This motion is based upon the Complaint on file herein, the accompanying affidavit of E. Roy Fitzgerald, and the accompanying Memorandum of Points and Authorities.

Motion No. 2

Said defendants move for a more definite statement or for a bill of particulars of the matters in the Complaint hereinafter mentioned upon the grounds (i) that the same are not averred with sufficient definiteness or particularity to enable said defendants properly to prepare their responsive pleadings or to prepare for trial, and (ii) that said Complaint is so vague and ambiguous that said defendants cannot reasonably be required to frame a responsive pleading thereto. The defects in the Complaint complained of and the details desired are the following:

1. As to Paragraph 20:

(a) State what is meant by the phrase "a substantial part" of interstate commerce therein referred to.

(b) It cannot be ascertained therefrom whether the "aforesaid interstate commerce" therein referred to is used in a distributive or in a geographical sense or in both a distributive and geographical sense.

91 (c) If said "aforesaid interstate commerce" is used in a geographical sense, it cannot be ascertained therefrom what geographical area or areas, intrastate or interstate, are comprehended within said time. State what geographical area is intended to be referred to, if less than the whole of the United States.

(d) There cannot be ascertained therefrom the identity of the "local transportation companies" therein referred to, or any thereof.

(e) There cannot be ascertained therefrom the identity of the "various cities, towns, and counties" therein referred to, or any thereof.

(f) There cannot be ascertained therefrom the identity of the "various states" therein referred to, or any thereof.

(g) It cannot be ascertained therefrom what is meant by the words "local transportation companies in which defendants National, American and Pacific * * * in the future acquire ownership, control, or a substantial financial interest in said local transportation companies"; or what, if any, local transportation companies are thus referred to.

2. As to Paragraph 21:

(a) It cannot be ascertained whether it is claimed that the alleged combination or conspiracy has consisted of (i) concert of action independent of agreement, continuing or otherwise; (ii) agreement, continuing or otherwise, independent of concert of action; or (iii) both agreement, continuing or otherwise, and concert of action.

92 (b) With reference to the "continuing agreement" alleged, it cannot be ascertained therefrom whether it is claimed that all defendants have been parties thereto since on or about January 1, 1937; and, if not, the periods of time during which it is claimed that each of the defendants were, and conversely were not, parties to such agreement cannot be ascertained therefrom.

(c) With reference to the "concert of action" alleged, it cannot be ascertained therefrom whether it is claimed that all defendants participated in fact in each acquisition of or attempt to secure control or acquire a substantial financial interest in, the local transportation companies referred to in Paragraph 20 of the Complaint; and, if not, it cannot be ascertained therefrom which defendants did or did not in fact participate in each such acquisition or attempt.

(d) It cannot be ascertained therefrom whether it is claimed that there was or is one agreement or combination, or conspiracy among all defendants, or two or more agreements, combinations, or conspiracies among some or all defendants; if the latter, the terms of each such agreement, combination or conspiracy and the claimed participants therein cannot be ascertained therefrom.

(e) It cannot be ascertained therefrom whether it is claimed that the alleged "continuing agreement and concert of action" has any terms other than those set forth in the Complaint; and,

93 if so, such other terms cannot be ascertained therefrom.

(f) It cannot be ascertained therefrom as to each defendant and as to each alleged agreement whether it is claimed that such defendant joined or entered into an express agreement, or whether it is claimed that each such agreement is to be inferred or implied.

(g) The identity of the "operating companies" referred to in subdivisions (a), (c), (d), (e), (f), and (g) cannot be ascertained therefrom.

(h) It cannot be ascertained therefrom whether it is claimed that any such agreement embraced "operating companies" other

than those in which control or a financial interest was purchased with money or capital contributed by the supplier defendants; and, if so, the identity of such operating company or companies cannot be ascertained therefrom.

(i) It cannot be ascertained therefrom whether it is claimed that the participation by any supplier defendant in the alleged "continuing agreement and concert of action" was dependent or conditioned upon the participation therein of any other supplier defendant or defendants; if so, the facts in this connection cannot be ascertained therefrom.

(j) It cannot be ascertained therefrom what is meant by the allegations appearing in subparagraph 21 (g) that the motorbuses, petroleum, and tire and tube business of said defendants "would be allocated and divided among the supplier defendants in an artificial, arbitrary and noncompetitive manner."

94 (k) It cannot be ascertained therefrom when or where it is claimed that the defendants or any of them entered into each such agreement, or whether the same was or were express, inferred, or implied, nor can the facts with reference to each such consent or refusal to consent, each such assumption and each such determination be ascertained therefrom. It cannot be ascertained therefrom whether it is claimed that each or any such agreement, consent or refusal to consent, assumption, or determination was reduced to identifiable writings or partially so, or was oral.

3. As to Paragraph 22:

(a) It cannot be ascertained therefrom whether it is claimed that the prices paid to the supplier defendants for tires and tubes, for buses, and for petroleum products, supplied to defendants National, American and Pacific, and their operating companies, or any of them, were generally in excess of, or the same as, or lower than, the prices at which such products were obtainable from other suppliers; nor can the facts in that connection be ascertained therefrom. State what is claimed in that connection. It cannot be ascertained therefrom whether it is claimed that such tires and tubes, such buses, and such petroleum products were generally of an inferior, or of the same, or of a superior grade or quality to the tires and tubes, the buses, and the petroleum products which were obtainable by said defendants from other than the supplier defendants; nor can the facts in that connection be ascertained therefrom. State what is claimed in that connection.

(b) As to each alleged agreement made by a supplier
95 defendant with any of said defendants or any of their operating companies, it cannot be ascertained therefrom whether or not each defendant was a party thereto, or if any defendant was not a party thereto, when and in what manner, if at all, such defendant ratified or approved such agreement.

(c) It cannot be ascertained therefrom, as to each defendant, the act or acts claimed to have been committed by it which it is claimed made such defendant a participant in the conspiracies alleged in the Complaint.

4. As to Subparagraph 23 (a):

There cannot be ascertained therefrom the identity of the alleged "other suppliers" of buses, of tires and tubes, and of petroleum products, which it is claimed were eliminated from competition in the sale of such products to said defendants or their operating companies or any of them, nor can the identity of the cities or other areas where such elimination of competition assertedly occurred be ascertained therefrom.

5. As to Subparagraph 23 (b):

(a) It cannot be ascertained therefrom how or in what manner the alleged restraint on trade and commerce in the sale of tires, tubes, motorbuses, and petroleum products to the defendants National, American, or Pacific or their operating companies has restricted production, raised prices or otherwise controlled the market of said commodities or eventually will, or was or
96 is intended by the defendants to do so. State the facts with particularity in this connection.

(b) It cannot be ascertained therefrom what detriment, if any, defendants National, American or Pacific, or their operating companies, or other consumers of the products of the supplier defendants, or the public generally, suffered or will suffer as the result of the alleged restraint on trade or commerce. State what detriment, if any, has been suffered or will be suffered by said defendants or any of the other parties mentioned.

(c) It cannot be ascertained therefrom when, where, by what means, or by virtue of what facts the acts and conduct of each supplier defendant substantially or unreasonably restrained trade or commerce in buses, in tires and tubes, and in petroleum products, sold to local transportation systems of the United States in which said defendants or any of them have control or a financial interest.

6. As to Subparagraph 23 (c):

It cannot be ascertained therefrom when, where, by what means and by virtue of what facts competition was substantially eliminated, suppressed, and excluded in the sale to said defendants and their operating companies of tires and tubes, of motorbuses, and of petroleum products or any of these.

7. As to Subparagraph 23 (d):

(a) It cannot be ascertained therefrom either, as to motorbuses, as to tires and tubes, or as to petroleum products, what it is claimed constitute or constituted "noncompetitive prices." It cannot be ascertained therefrom whether it is claimed that the prices paid by said defendants or any of their operating companies to any of the supplier defendants were higher than, the same as, or lower than, prices for like commodities obtainable from competitors. The facts upon which the Government predicates the allegation that the prices charged to said defendants and their operating companies by the supplier defendants are or were "noncompetitive prices" cannot be ascertained therefrom. It cannot be ascertained therefrom whether such alleged "noncompetitive prices" were evidenced wholly or in part in identifiable writings.

97

(b) It cannot be ascertained therefrom whether the alleged act or acts of the supplier defendants in charging "noncompetitive prices" for buses, tires and tubes, and petroleum products, respectively, sold to these defendants, or their operating companies, resulted in detriment to these defendants or to their operating companies or to other customers of said supplier defendants or to the general public. State the nature and effect of such detriment.

8. As to Subparagraph 23 (e):

It cannot be ascertained therefrom when, where, by what means and by virtue of what facts it is claimed that the alleged nationwide market of said defendants and their operating companies for tires and tubes, for motorbuses, and for petroleum products "has been divided among and allocated to" the supplier defendants; nor can the facts with reference to such asserted allocation and division and the geographical area or areas allegedly affected thereby be ascertained therefrom.

98

9. As to Paragraphs 20 and 22:

It cannot be ascertained therefrom whether it is claimed that the "other persons to the plaintiff unknown," or any of them,

were identifiable employees or other identifiable persons either representing the defendants or any of them or under the supervision of their duly authorized officers or agents. State the names and addresses of each such identifiable employee or other person representing any of the defendants or under the supervision of any of their officers or agents.

Said defendants further move that as to any of the above requested information which the Government does not now have but hereafter acquires, it be ordered to furnish the same, in appropriate form or by appropriate amendment, to counsel for said defendant immediately upon the acquisition thereof.

This motion is supported by the accompanying Memorandum of Points and Authorities.

Motion No. 3

Defendant National City Lines, Inc., moves to quash the purported service of process on defendant American City Lines, Inc., and that the Complaint be dismissed as to American City Lines, Inc., on the ground that said American City Lines, Inc., having been merged into National City Lines, Inc., ceased to exist on or about July 15, 1946, and this Court cannot obtain jurisdiction over said American City Lines, Inc., by any purported service of process upon it, all as more fully appears in the accompanying affiavit of C. Frank Reavis.

99

This motion is based upon the Complaint in the above entitled action, upon the accompanying affidavit of C. Frank Reavis, and upon the accompanying Memorandum of Points and Authorities.

Said defendants and each of them hereby reserve the right at any stage of the proceedings in the above captioned suit, to move to dismiss the suit against said defendants on the ground that the Complaint fails to state a claim upon which relief can be granted.

Said defendants request the Court to hear oral argument of the foregoing motions.

Dated Los Angeles, California, August 11, 1947.

O'MELVENY & MYERS,
PIERCE WORKS,
JACKSON W. CHANCE,
By Jackson W. Chance,
JACKSON W. CHANCE,
Attorneys for Defendants National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc.

Of Counsel:
HODGES, REAVIS, PANTALEONI & DOWNEY.

100 In the District Court of the United States in and for the Southern District of California, Central Division

O'Melveny & Myers

Title Insurance Building, 433 South Spring Street

Los Angeles 13, Cal.

Received copy of the within Notice of Motions to Dis. this 11 day of Aug. 1947.

Haight, Trippet & Syverston,
Attorney for Defendants.

Received copy of the within Notice of Motions this 11th day of August 1947.

W. C. Dixon,
H. S.
Attorney for U. S. Government.

Received copy of the within Notice of Motions to Dis. this 11 day of August 1947.

Cosgrove, Clayton, Cramer & Diether,
Attorneys for Def. Gen. Motors.

Received copy of the within ——— ——— ——— this 11th day of August 1947.

Finlayson, Bennett & Morrow.

Received copy of the within Notice of Motions to Dismiss, etc., this 11th day of August 1947.

Wright & Milliken,
(——— M. Jensen)
Attorney for Mack Manufacturing Corporation.

Received copy of the within Notice of Motions to Dismiss, etc., this 11th day of August 1947.

Lawler, Felix & Hall,
By Harriett S. Elder.

101 In the District Court of the United States for the Southern District of California, Central Division

Civil No. 6747–Y

[Title omitted.]

[File endorsement omitted.]

Notice of motion to dismiss and motion for more definite statement or for bill of particulars of the Firestone Tire & Rubber Company

Filed Aug. 11, 1947

To Plaintiff and Its Attorneys:

Please take notice that on September 15, 1947, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, in the courtroom of the Honorable Leon R. Yankwich, defendant The Firestone Tire & Rubber Company will move the Court as follows:

(1) To dismiss the complaint on file herein on the ground that this is not a convenient forum to try said action and that the most convenient forum therefor is the United States District Court for the Northern District of Illinois, Eastern Division (Chicago).

Said motion is based upon this Notice of Motion, upon the affidavit of E. Roy Fitzgerald, upon the Memorandum of Points and Authorities of defendant National City Lines, Inc. (which said affidavit and Points and Authorities are by reference incorporated herein), and upon the records and files of this cause.

102 (2) For a more definite statement or for a bill of particulars of the matters in the complaint which are set forth in the Notice of Motion of defendant National City Lines, Inc., on file in this cause. This motion will be made upon the grounds:

(a) That said matters are not averred with sufficient definiteness or particularity to enable defendant properly to prepare its responsive pleading; and

(b) That said complaint is so vague and ambiguous that defendant cannot reasonably be required to frame a responsive pleading thereto.

This motion will be based upon this Notice of Motion, the Points and Authorities attached to the Notice of Motion of defendant National City Lines, Inc. (which Points and Authorities are by this reference incorporated herein), and the records and files of this cause.

Defendant further moves that as to any of the above requested information which the Government does not now have but hereafter acquires, it be ordered to furnish the same, in appropriate form or by appropriate amendment, to counsel for defendant immediately upon the acquisition thereof.

Defendant hereby reserves the right to file a supplemental or further Memorandum of Points and Authorities in support of each of the foregoing motions, and reserves the right at any stage of the proceedings herein to move to dismiss the complaint or any part thereof on the ground that it fails to state a claim upon which relief can be granted.

Defendant requests the Court to hear oral argument of the foregoing motions.

Dated Los Angeles, California, August 11, 1947.

JOSEPH THOMAS,
HAIGHT, TRIPPET & SYVERTSON,
By F. B. YOAKUM, Jr.,
Attorneys for Defendant,
The Firestone Tire & Rubber Company.

Received copy of the within Notice of Motions this 11th day of August 1947.

W. C. DIXON,
H. S.
Attorney for U. S. Government.

103 In the District Court of the United States, Southern District of California, Central Division

[File endorsement omitted.]
[Title omitted.]

Joinder of defendant, General Motors Corporation, in motion to dismiss.

Filed Aug. 11, 1947

Defendant, General Motors Corporation, joins in the motion of National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc., to dismiss the above-entitled action on the ground that this is not a convenient forum to try said action, and that the most convenient forum therefor is the United States District Court for the Northern District of Illinois, Eastern Division (Chicago).

Dated August 8th, 1947.

HENRY M. HOGAN, and
COSGROVE, CLAYTON, CRAMER & DIETHER,
T. B. Cosgrove,
LEONARD A. DIETHER,
By T. B. COSGROVE,
Attorney for the Defendant,
General Motors Corporation.

104 NOTICE OF MOTION

To the UNITED STATES OF AMERICA and WILLIAM C. DIXON, Esq., JESSE R. O'MALLEY, Esq., ROBERT J. RUBIN, Esq., and LEONARD M. BESSMAN, Esq., its Attorneys:

Please take notice that the undersigned will bring the above Motion on for hearing before this Court in the United States Post Office and Court House, courtroom of Judge Leon R. Yankwich, Los Angeles, California, on the 15th day of September 1947, at the hour of 10:00 o'clock A. M. on said day, or as soon thereafter as counsel can be heard.

You will please take further notice that said Motion will be made upon the files and records herein.

You will please take further notice that said defendant will rely upon the Affidavit of E. Roy Fitzgerald and upon the Points and Authorities of defendants National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc., filed herein in support of said defendant's Motion to Dismiss.

HENRY M. HOGAN, and
COSGROVE, CLAYTON, CRAMER & DIETHER,
T. B. Cosgrove,
LEONARD A. DIETHER,
By T. B. COSGROVE,
Attorneys for Defendant, General Motors Corporation.

105 In the District Court of the United States for the Southern District of California, Central Division

Civil Action No. 6747–Y

UNITED STATES OF AMERICA, PLAINTIFF
vs.
NATIONAL CITY LINES, INC., DEFENDANTS

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Dorothy P. Jones, being first duly sworn, deposes and says: That she is a citizen of the United States and a resident of Los Angeles County, California; that her business address is 1031 Rowan Building, 458 South Spring Street, Los Angeles, California; that she is over the age of eighteen years, and is not a party to the above-entitled action;

That on August 11, 1947, she deposited in the United States Mails at Los Angeles, in an envelope bearing the requisite postage, a copy of "Joinder of Defendant, General Motors
106 Corporation, in Motion to Dismiss" addressed to: William C. Dixon, Esq.; Jackson W. Chance, Esq., O'Melveny & Myers; Oscar Trippet, Esq., Haight, Trippet & Syvertson; Hubert T. Morrow, Esq., Bennett, Finlayson & Morrow; Charles E. Millikan, Esq., Wright & Millikan; John M. Hall, Esq., Lawler, Felix & Hall, at their last known address, at which place there is a delivery service by United States Mails.

DOROTHY P. JONES.

Subscribed and sworn to before me this 11th day of August 1947.

[NOTARIAL SEAL] ROSE SCHINDELMAN,
Notary Public in and for said County and State.

107 In the District Court of the United States for the Southern District of California, Central Division

[File endorsement omitted.]
[Title omitted.]

Notice of motion, of Defendant Phillips Petroleum Company, to dismiss; notice of motion of said Defendant for a more definite statement or bill of particulars

Filed Aug. 11, 1947

To the above-named plaintiff and its attorneys of record:

Please take notice that on the 15th day of September 1947, at 10 o'clock a. m. of that day, or as soon thereafter as counsel can be heard, in the Court Room of the Honorable Leon R. Yankwich, United States District Judge, the Second Floor of the Federal Building, 312 North Spring Street, City of Los Angeles, California, defendant Phillips Petroleum Company will move the Court as follows:

MOTION TO DISMISS

To dismiss the action and the Complaint therein on the ground that the above District is not a convenient forum in which
108 to try said suit and that the most convenient forum therefor is the United States District Court for the Northern District of Illinois, Eastern Division (Chicago).

Said Motion will be based upon the Complaint on file herein, upon the Affidavit of E. Roy Fitzgerald filed in connection with

similar Notice of Motion of National City Lines, Inc., and upon all other affidavits filed on behalf of the like motion of other defendants herein, said affidavits being, for the convenience of the Court and to avoid repetition, hereby adopted, referred to, and relied upon, to the same effect as though the same were filed herewith.

Likewise, for the convenience of the Court and to avoid repetition, said Motion will be based upon and hereby refers to the Memorandum of Points and Authorities filed herein by the defendant National City Lines, Inc., and also any memoranda filed by any others of the defendants, in support of their respective motions to dismiss.

Motion for more definite statement or bill of particulars

As an alternative to the foregoing relief this defendant Phillips Petroleum Company, at the time and place aforesaid, will move the Court to make an order for a more definite statement and for a bill of particulars of the matters in the Complaint as hereinafter specified, upon the ground that said Complaint is so vague and ambiguous that this defendant cannot reasonably be required to frame a responsive pleading, and that the matters in said pleading are not averred with sufficient definiteness or particularity to enable this defendant properly to prepare its responsive pleading or to properly prepare for trial. As to the particulars of the defects in the Complaint complained of and the details and particulars desired, for the convenience of the Court and to avoid
109 repetition, this defendant hereby adopts, refers to, and relies upon, each and all of the specifications and particulars set forth in the Notice of Motion for a more definite statement of the defendant National City Lines, Inc. on file herein, the same as though the same were herein specifically set forth.

In support of the foregoing motion, defendant Phillips Petroleum Company, for the convenience of the Court and to avoid repetition, hereby adopts, refers to, and relies upon the Memorandum of Points and Authorities filed herein of National City Lines, Inc., in support of its proposed motion for a more definite statement, and likewise to such memoranda as may be filed herein by any of the other defendants in connection with their motions for more definite statement of the matters in the Complaint.

This defendant hereby reserves the right at any stage of the proceedings in the above suit, to move to dismiss the action as to defendant Phillips Petroleum Company on the ground that the complaint fails to state a claim against said defendant upon which relief can be granted.

This defendant requests the Court to permit oral argument in support of the foregoing motions.

Dated at Los Angeles, California, this 11th day of August 1947.

H. T. Morrow and
Finlayson, Bennett & Morrow,
By H. T. Morrow,
Attorneys for Defendant,
Phillips Petroleum Company.

Received copy of the within Notice of Motion this 11th day of August 1947.

W. C. Dixon,
H. S. B
Attorney for U. S. Government.

110 In the District Court of the United States for the Southern District of California, Central Division

[File endorsement omitted.]
[Title omitted.]

Amendment and supplement of National City Lines, Inc., et al., to motion to dismiss

Filed Aug. 28, 1947

Defendants National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc., hereby amend and supplement Motion No. 1 of their motions heretofore filed and noticed for hearing on September 15, 1947, by adding a further ground of said motion as follows:

The above-entitled Court did, on August 14, 1947, make and enter an Order in that certain proceeding then pending in said Court and being entitled "United States of America v. National City Lines, Inc., et al., Defendants," being Criminal No. 19270 in the files of said Court, transferring said proceeding to the United States District Court for the Northern District of Illinois,
111 Eastern Division (Chicago); that the transactions upon which the indictment was returned in said No. 19270 are identical with the transactions set forth and alleged in the Complaint on file in the above-entitled suit; and that it is not in the interests of justice that these defendants be required to defend this equity suit at Los Angeles, California, when the criminal proceeding involving the same transactions has been transferred to and is now pending in the United States District Court for the Northern District of Illinois, Eastern Division (Chicago).

This amendment and supplement to motion to dismiss is based upon the Complaint on file herein, upon said motion to dismiss and the notice of motion accompanying said motion, upon the affidavit of E. Roy Fitzgerald and the memorandum of points and authorities heretofore filed herein, upon the accompanying affidavit of Jackson W. Chance and the Indictment, Opinion and Order (copies of each of which are attached to said affidavit of Jackson W. Chance), and upon the documents, memoranda, papers and minutes incorporated by reference into and made a part of said last-named affidavit.

Dated at Los Angeles, California, August 26, 1947.

O'MELVENY & MYERS,
PIERCE WORKS,
JACKSON W. CHANCE,
By Jackson W. Chance,
JACKSON W. CHANCE,

Attorneys for National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc.

Of Counsel:
HODGES, REAVIS, PANTALEONI & DOWNEY.

It is ordered that the motion to dismiss heretofore filed in the above-entitled action and noticed for hearing on September 15, 1947, may be amended and supplemented as set forth above.

LEON R. YANKWICH,
United States District Judge.

112 In the District Court of the United States, Southern District of California, Central Division

[File endorsement omitted.]
[Title omitted.]

Affidavit of Jackson W. Chance in support of amendment and supplement to motion to dismiss

Filed Aug. 28, 1947

STATE OF CALIFORNIA,
County of Los Angeles, ss.

Jackson W. Chance, being first duly sworn, deposes and says that:

He is one of the counsel of record for defendants National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc., in the above-entitled suit; and is one of counsel of record for said defendants and has made a study of and is familiar with the files and records in that certain criminal proceeding entitled

"United States of America v. National City Lines, Inc., et al., Defendants;" pending in the United States District Court for the Southern District of California, Central Division, until transferred as hereinafter described, and being Criminal No. 19270 in the files of said Court.

The indictment in said criminal proceeding No. 19270 was returned in the above-entitled Court on the same date that the Complaint in the above-entitled suit was filed. The transactions complained of and the charges made in the indictment in said No. 19270 are the same as those alleged in the Complaint on file herein; the allegations of the Complaint on file herein are substantially the same as the charges of the indictment in said criminal proceeding; and the corporate defendants in said criminal proceedings are identical with the corporate defendants named in the Complaint on file herein; all of which more fully appears from said indictment, a true and correct copy of which is attached hereto marked Exhibit A and made a part hereof.

113 On July 14, 1947, a motion to transfer said criminal proceeding to the United States District Court for the Northern District of Illinois, Eastern Division (Chicago) was presented to the above-entitled Court in said Criminal No. 19270, pursuant to Federal Rules of Criminal Procedure, Rule No. 21 (b). An affidavit of E. Roy Fitzgerald, President of defendant National City Lines, Inc., was filed in support of said motion, setting forth identically the same facts as are set forth in the affidavit of said E. Roy Fitzgerald filed in the above entitled civil suit in support of the motion to dismiss on the grounds of forum non conveniens. A counter affidavit of Jesse O'Malley, one of the attorneys for the United States in said criminal proceeding No. 19270, was filed therein in reply to said affidavit of E. Roy Fitzgerald and in opposition to said motion to transfer. An answering affidavit of E. Roy Fitzgerald was also filed in support of said motion. Said motion to transfer was orally argued and briefs were submitted by the respective parties.

On August 14, 1947, the above-entitled Court in said criminal proceeding No. 19270 rendered a written Opinion, a true and correct copy of which is attached hereto, marked "Exhibit B" and made a part hereof; and also made and entered an Order, a true and correct copy of which is attached hereto, marked "Exhibit C," and made a part hereof, determining that in the interests of justice said proceeding should be transferred to and tried by the United States District Court for the Northern District of Illinois, Eastern Division (Chicago), and ordered said proceeding transferred to the District Court in Chicago, Illinois, and said proceedings is now transferred to and is pending in said District Court in Chicago.

The motion to transfer, the affidavit of E. Roy Fitzgerald in support thereof, the counter affidavit of Jesse O'Malley in opposition to said motion, the reply affidavit of E. Roy Fitzgerald in support thereof, the several memoranda of points and authorities in support of and in opposition to said motion, and the minutes of the Court in connection with said motion and Order, all in said criminal proceeding No. 19270, are by this express reference thereto hereby incorporated herein and made a part hereof as fully as though set forth at length herein.

JACKSON W. CHANCE.

Subscribed and sworn to before me, this 27th day of August, 1947.

[SEAL] RUBY E. SLOANAKER,
Notary Public in and for the County of Los Angeles, State of California.

114 *Exhibit "A" to affidavit*

In the District Court of the United States, Southern District of California, Central Division

Criminal Action No. 19270

UNITED STATES OF AMERICA

v.

NATIONAL CITY LINES, INC., AMERICAN CITY LINES, INC., PACIFIC CITY LINES, INC., FIRESTONE TIRE & RUBBER COMPANY, GENERAL MOTORS CORPORATION, PHILLIPS PETROLEUM COMPANY, MACK MANUFACTURING CORPORATION, STANDARD OIL COMPANY OF CALIFORNIA, FEDERAL ENGINEERING CORPORATION, E. ROY FITZGERALD, FOSTER G. BEAMSLEY, H. C. GROSSMAN, HENRY C. JUDD, L. R. JACKSON, B. F. STRADLEY, A. M. HUGHES, DEFENDANTS

INDICTMENT

The Grand Jury charges:

FIRST COUNT

1. PERIOD OF TIME COVERED BY THE INDICTMENT

1. Each of the allegations contained in this Indictment, unless otherwise specified, shall be deemed to refer to the period beginning on or about January 1, 1937, the exact date being to the Grand Jurors unknown, and continuing thereafter up to and including the date of presentment of this Indictment.

II. DEFENDANTS

2. National City Lines, Inc. (sometimes herein after referred to as "National") is hereby indicted and made a defendant.
115 Said defendant is a corporation organized and existing under the laws of the State of Delaware, and has it principal place of business in Chicago, Illinois.

3. American City Lines, Inc. (sometimes hereinafter referred to as "American") is hereby indicted and made a defendant. Said defendant American is a corporation which was organized in 1943 under the laws of the State of Delaware. Since 1943 American has been a subsidiary of defendant National and has managed and operated local transportation systems throughout the United States on behalf of defendant National. Said defendant American has its principal place of business in Chicago, Illinois.

4. Pacific City Lines, Inc. (sometimes hereinafter referred to as "Pacific") is hereby indicted and made a defendant. Said defendant Pacific is a corporation organized and existing under the laws of the State of Delaware and is a subsidiary of defendant National. Pacific has its principal place of business in Oakland, California. At various times during the period beginning on or about February 1938 and ending about August 16, 1946, defendants National, Federal Engineering Corporation, General Motors Corporation and Firestone Tire & Rubber Company each owned a stock interest in Pacific. Since about August 16, 1946, Pacific has been a wholly owned subsidiary of defendant National. Pacific operates and manages various local transportation systems located in the States of California, Washington and Utah on behalf of defendant National.

5. Standard Oil Company of California, a Delaware corporation (sometimes hereinafter referred to as "Standard" and as a "supplier defendant"), is hereby indicted and made a defendant. Said defendant Standard has its principal place of business in the City of San Francisco, California, and is engaged in the production and sale of petroleum products.

6. Federal Engineering Corporation, a California corporation (sometimes hereinafter referred to as "Federal"), is hereby indicted and made a defendant. Said defendant Federal is a wholly owned subsidiary of defendant Standard and has its principal place of business in San Francisco, California. Federal is engaged in the business of making and managing investments on behalf of defendant Standard.

7. Phillips Petroleum Company, a Delaware corporation (sometimes hereinafter referred to as "Phillips" and as a "supplier defendant"), is hereby indicted and made a defendant. Said defendant Phillips has its principal place of business in the City of

Bartlesville, Oklahoma, and is engaged in the production and sale of petroleum products.

116 8. General Motors Corporation, a Delaware corporation (sometimes hereinafter referred to as "General Motors" and as a "supplier defendant"), is hereby indicted and made a defendant. Said defendant General Motors has its principal place of business in the City of Detroit, Michigan, and is engaged, among other things, in the production and sale of motorbuses. On September 30, 1943, General Motors acquired the assets and assumed certain obligations of Yellow Truck and Coach Manufacturing Company, and the business formerly carried on by said Yellow Truck and Coach Manufacturing Company has since been carried on by the GMC Truck and Coach Division of said defendant General Motors. The term "General Motors" is used herein to mean Yellow Truck and Coach Manufacturing Company for the period prior to September 30, 1943.

9. Firestone Tire and Rubber Company, an Ohio corporation (sometimes hereinafter referred to as "Firestone" and as a "supplier defendant"), is hereby indicted and made a defendant. Said defendant Firestone has its principal place of business in the City of Akron, Ohio, and is engaged in the production and sale of tires, tubes, and other rubber and automotive products.

10. Mack Manufacturing Corporation, a Delaware corporation (sometimes hereinafter referred to as "Mack" and as a "supplier defendant"), is hereby indicted and made a defendant. Said defendant Mack has its principal place of business in New York, New York, and is engaged in the manufacture and sale of motortrucks and buses.

11. The individuals whose names and addresses are set forth below are hereby indicted and made defendants. Each of said individuals is associated with or employed by the defendant corporation as shown below. Each of the individual defendants within the period of time covered by the Indictment, including the three years next preceding the date of this Indictment, has been actively engaged in the management and control of the policies and acts of the defendant corporation which he represents or with which he is associated, and has participated in, authorized, ordered, or done some of the acts constituting the offenses hereinafter charged.

117 Defendant's address and Defendant Corporation with which associated:

E. Roy Fitzgerald, President and Director, Chicago, Ill., National.

Foster G. Beamsley, Vice-Pres. and Director, Chicago, Ill., National.

H. C. Grossman, Assistant Secretary, Detroit, Mich., General Motors.

Henry C. Judd, Treasurer, San Francisco, Calif., Standard and Federal.

L. R. Jackson, Vice President, Akron, Ohio., Firestone.

B. F. Stradley, Secretary-Treasurer, Bartlesville, Okla., Phillips.

A. M. Hughes, Vice-Pres. and Director, Bartlesville, Okla., Phillips.

12. Whenever it is hereinafter alleged in this Indictment that a defendant corporation did or performed any act or thing, the allegation shall be deemed to charge that its duly authorized directors, officers, and agents, including the individual defendants named herein, together with other persons to the Grand Jury unknown, have approved, authorized, ordered, directed, or done such act or thing.

III. NATURE OF TRADE AND COMMERCE INVOLVED

13. Throughout the United States, transportation systems are operated by privately owned or publicly owned companies to provide local transportation service in cities, towns, counties, and other governmental subdivisions of the various states. Such companies purchase and use large quantities of busses, tires, tubes, and petroleum products, as well as electrically propelled streetcars in the operation of said transportation systems.

14. National is a holding company, the operations of which are directed from National's office in Chicago, Illinois. National and its subsidiaries, American and Pacific, own, control, or have a substantial financial interest in corporations, sometimes hereinafter referred to as "operating companies," which are located throughout the United States and which are engaged in the business of providing local transportation service to more than forty-two cities and other governmental divisions in sixteen states of the United States. The term "operating companies" as
118 used hereinafter is intended to include American and Pacific in the cities and governmental divisions in which said defendants operate local transportation systems. Said operating companies are located and operated in, among other places, the Cities and States of Baltimore, Maryland; Tampa, Florida; Mobile, Montgomery, Alabama; Beaumont, Port Arthur, El Paso, Texas; Aurora, Elgin, Bloomington, Normal, Champaign, Urbana, Danville, Decatur, East St. Louis, Joliet, Quincy, Illinois; Terre Haute, Indiana; Jackson, Kalamazoo, Pontiac, Saginaw, Michigan; Canton, Portsmouth, Ohio; Burlington, Cedar Rapids,

Ottumwa, Iowa; Tulsa, Oklahoma; Lincoln, Nebraska; St. Louis, Missouri; Jackson, Mississippi; Salt Lake City, Utah; Everett, Spokane, Washington; Sacramento, Eureka, Fresno, Glendale, Pasadena, San Jose, Stockton, Los Angeles, Oakland, and Long Beach, California. The operating companies which provide the local transportation service frequently use both motorbusses and electrically propelled streetcars. It is the policy of National to have the operating companies provide local transportation service by motorbusses wherever possible.

15. The operating companies of defendants National, American and Pacific purchase and use large quantities of motorbusses, tires, tubes, and petroleum products which are manufactured and produced in various states of the United States by the supplier defendants herein and which are shipped from said places of production and manufacture across state lines and in interstate commerce by supplier defendants to the defendants National, American, Pacific and their operating companies, located, among other places, in the States and Cities of the United States named in Paragraph 14 herein. The dollar volume of such products purchased by the defendants National, American, Pacific, and their operating companies from the supplier defendants herein during the year 1945 was approximately $5,000,000.

16. Defendant General Motors produces automobile and automotive equipment in plants located in twelve different states of the United States, including the State of Michigan. In said plants, General Motors manufactures motorbusses which are sold and shipped in interstate commerce to defendants National, American and Pacific, and their operating companies. Sales of motorbusses by defendant General Motors to defendants National, American and Pacific and their operating companies were in excess of $25,000,000 for the years 1936 to 1946, inclusive.

17. Defendant Firestone has plants in the States of Ohio, Tennessee, and California, in which automobile tires and tubes
119 are manufactured for and shipped to defendants National, American and Pacific, and their operating companies. Annual sales of tires and tubes by defendant Firestone to Defendants National, American and Pacific and their operating companies are now in excess of $450,000.

18. The production of petroleum products by defendant Phillips is concentrated in the State of Texas, Oklahoma, and Kansas, from which States said products are shipped in interstate commerce into the States of Michigan, Illinois, Indiana, Oklahoma, Iowa, Nebraska, Texas, and Missouri for use by defendants National and American and their operating companies. Annual sales of petroleum products by defendant Phillips to defendants

National and American and their operating companies are now in excess of $960,000.

19. Defendant Standard has large petroleum holdings in fields located in California, Texas, New Mexico, Colorado, Mississippi, and Louisiana, but production and refining of petroleum products by said Company is concentrated in the States of California and Texas, from which states petroleum products are shipped in interstate commerce to defendants National, American and Pacific, and their operating companies in the States of Washington, Utah and California.

20. Defendant Mack has plants in New Jersey and Pennsylvania, in which motorbusses are manufactured for and shipped to defendants National, American and Pacific and their operating companies. Total sales made by defendant Mack to defendants National, American and Pacific, and their operating companies during the period covered by this Indictment are in excess of three and one-half million dollars.

IV. THE CONSPIRACY

21. Beginning on or about January 1, 1937, the exact date being to the Grand Jury unknown, and continuing to and including the date of the return of this Indictment, the defendants, together with other persons to the Grand Jury unknown, have knowingly and continuously engaged in wrongful and unlawful combination and conspiracy to acquire or otherwise secure control of or acquire a substantial financial interest in a substantial part of the companies which provide local transportation service in the various cities, towns, and counties of the several states of the United States, and to eliminate and exclude all competition in the sale of motorbusses, petroleum products, tires, and tubes to the local transportation companies owned or controlled by or in which National, American, or Pacific had a substantial financial interest, and to local transportation companies in which said companies acquired or, in the future, acquire ownership, control, or a substantial financial interest, all in violation of Section 1 of the Act of Congress of July 2, 1890, as amended (15 U. S. C. 1), commonly known as the Sherman Act.

22. The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action among the defendants, the substantial terms of which have been and are:

(a) That the supplier defendants Firestone, Standard, Phillips, General Motors, and Mack would furnish money and capital to defendants National, American, and Pacific, and that said defendants would purchase and cause their operating companies to purchase substantially all of their requirements of tires, tubes,

petroleum products, and busses from said supplier defendants to the exclusion of products competitive therewith;

(b) That said money and capital made available by the supplier defendants would be utilized by defendants National, American, and Pacific to purchase or secure the control of or a financial interest in local transit systems located in the various states of the United States when the securing of such control or interest in said local transit systems would further the sale of and create an additional market for the products of the supplier defendants to the exclusion of products competitive thereto;

(c) That defendants National, American, Pacific, and their operating companies, would not renew or enter into any contracts for the purchase, rental, or use of tires, tubes, motorbusses, or petroleum products from suppliers other than the supplier defendants without the consent of the supplier defendants servicing the territory wherein such products and equipment were to be used;

(d) That defendants National, American, and Pacific would not dispose of their interest in any operating company without requiring the party acquiring such operating company or equipment thereof to assume the obligation of continuing to purchase its requirements of tires, tubes, motorbusses, and petroleum products from the supplier defendants herein;

(e) That neither defendants National, American, and Pacific nor their operating companies would convert or change the
121 equipment used by them from a type using the products sold by the supplier defendants to any other type without the consent of the supplier defendants herein;

(f) That neither defendants National, American and Pacific nor their operating companies would purchase any new type of equipment which would use products other than the products sold by the supplier defendants without the consent of the supplier defendants herein;

(g) That the motorbus, petroleum, tire, and tube business of defendants National, American, Pacific, and their operating companies would be allocated and divided among the supplier defendants in an artificial, arbitrary and noncompetitive manner, as is more fully set forth in Paragraph 23 (b) herein.

(h) That as National, American, or Pacific acquired local transportation systems in the Eastern section of the United States, this market would be allocated to and preempted by a company selling petroleum products in the Eastern section of the United States.

23. During the period of time covered by this Indictment and for the purpose of forming and effectuating the aforesaid com-

bination and conspiracy, the defendants and other persons to the Grand Jury unknown, by agreement and concert of action, have done the things which, as hereinbefore alleged, they conspired to do, including but not limited to the following acts:

(a) Between January 1, 1939 and the date of the presentment of this Indictment, the supplier defendants purchased stock in defendants National, American, and Pacific, substantially all of the proceeds of which were used by said defendants to acquire control of or financial interests in local transit systems throughout the United States. Said stock purchases by the supplier defendants were in the approximate amounts as follows:

Name of Supplier Defendant:	Amount paid for stock purchased
Standard Oil Company of California, Federal Engineering Corporation	$2,074,310.57
General Motors Corporation	3,190,802.32
Phillips Petroleum Company	1,574,064.82
Firestone Tire & Rubber Company	1,383,403.41
Mack Manufacturing Corporation	1,300,071.43

122 (b) The business of supplying tires, tubes, motorbusses, and petroleum products to the defendants National, American, Pacific, and their operating companies was and is divided among the supplier defendants as follows:

(1) The defendant Firestone was allocated and has supplied substantially all the automotive tires and tubes required by the operating companies of National, American, and Pacific;

(2) The defendants General Motors and Mack were allocated and have supplied substantially all the motorbusses used by defendants National, American, Pacific, and their operating companies. This motorbus business was divided between defendant General Motors and defendant Mack as follows: Defendant General Motors was allocated and it furnished approximately 85% of all the motorbusses required by defendant National and its operating companies as of August 2, 1939, and approximately 42.5% of all motor busses required by any operating company in which defendant National thereafter acquired ownership, control, or a substantial financial interest. Defendant Mack was allocated and it furnished approximately 42.5% of all motorbusses required by the operating companies in which National acquired ownership, control, or a substantial financial interest after August 2, 1939. The remaining 15% of said motorbus business was reserved for emergency purchases or for disposition as agreed upon by the supplier defendants;

(3) The petroleum products business of National, American, Pacific, and their operating companies, was and is divided in such a manner that the defendant Standard provides substantially all

the petroleum products requirements of the said defendants and their operating companies doing business on the Pacific Coast and in adjacent areas, including but not limited to the States of California, Washington, and Utah, and the defendant Phillips provides substantially all the petroleum products requirements of the defendants National and American and their operating companies located in the Midwestern section of the United States, including but not limited to the States of Michigan, Indiana, Illinois, Missouri, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, and Oklahoma.

123 (c) Defendants National, American, and Pacific have acquired a financial interest in or control of local transportation systems in cities and areas including but not limited to the following: Los Angeles, California; St. Louis, Missouri; Baltimore, Maryland; Spokane, Washington; Salt Lake City, Utah; and Tampa, Florida.

V. EFFECTS OF THE CONSPIRACY

24. The combination and conspiracy hereinbefore alleged have had, as intended by the defendants, the following effects, among others:

(a) Eliminating competition from other suppliers in the sale of busses, tires, tubes, and petroleum products to defendants National, American, Pacific, and their operating companies;

(b) Substantially and unreasonably restraining interstate trade and commerce in tires, tubes, motorbusses, and petroleum products sold to local transportation systems of the United States in which defendants National, American, and Pacific have or acquire a financial interest;

(c) Substantially eliminating, suppressing, and excluding competition in the sale to defendants National, American and Pacific, and their operating companies, of tires, tubes, motorbusses, and petroleum products;

(d) Charging noncompetitive prices for tires, tubes, motorbusses, and petroleum products sold to defendants National, American, Pacific, and their operating companies;

(e) The nation-wide market of defendants National, American, Pacific, and their operating companies for tires, tubes, motorbusses, and petroleum products has been divided among and allocated to the supplier defendants herein.

VI. JURISDICTION AND VENUE

25. The combination and conspiracy herein alleged has been carried out in part within the Southern District of California, Central Division. Pursuant to said combination and conspiracy

and in furtherance thereof, defendant American, on or about January 10, 1945, the exact date being to the Grand Jury unknown, purchased a controlling interest in the properties theretofore operated by the Los Angeles Railway Corporation of the City of Los Angeles, California. Defendant American made the
124 purchase pursuant to a verbal understanding entered into between it and defendant Federal on or about December 21, 1944, the exact date being to the Grand Jury unknown, whereby defendant Federal supplied defendant American with the sum of $1,074,064.82 to be used with other funds in acquiring control of the Los Angeles Railway Corporation. Defendant Federal received 10,000 shares of 5% preferred and 13,333 shares of common stock in defendant American for said $1,074,064.82. On or about January 10, 1945, defendant American assumed and took over the control of the Los Angeles Railway Corporation, now known as the Los Angeles Transit Lines. Pursuant to the aforementioned oral understanding between defendants Federal and American, defendant Standard on or about May 7, 1945, was granted a contract by the Los Angeles Transit Lines whereby defendant Standard secured the right to furnish 50% of the gasoline and Diesel fuel and all of the other petroleum products requirements of the Los Angeles Transit Lines for a period of ten years beginning June 1, 1945, said contract to remain in force after May 31, 1935, unless terminated by twelve months' written notice by either party thereto. Under said contract it was agreed that existing contracts covering the purchase of petroleum products by the Los Angeles Transit Lines from suppliers other than defendant Standard were to be terminated at their earliest possible termination date. On or about May 1, 1946, said contract was amended to provide that the Los Angeles Transit Lines should purchase all of its petroleum products requirements from defendant Standard and that the contract should remain in effect until April 30, 1956, and thereafter until terminated by twelve months' written notice from either defendant Standard or the Los Angeles Transit Lines.

COUNT II

26. Each and every allegation contained in this Indictment in Paragraphs numbered 1 through 20, inclusive, is hereby realleged with the same force and effect as though said allegations were here set forth in full.

I. CONSPIRACY TO MONOPOLIZE

27. Beginning on or about January 1, 1937, the exact date being to the Grand Jury unknown, and continuing thereafter up to and including this date of the return of this Indictment, the defendants

and others to the Grand Jury unknown have knowingly, wrongfully, and unlawfully, combined and conspired to monopolize part of the interstate trade and commerce of the United States,
125 to wit, that part consisting of the sale of motorbusses, petroleum products, tires, and tubes used by local transportation systems in those cities, towns, and counties in which defendants National, American, and Pacific owned, controlled, or had a substantial financial interest in, or acquired, or in the future, acquire, ownership, control, or a substantial financial interest in, said local transportation systems, in violation of Section 2 of the Act of Congress of July 2, 1890, as amended (15 U. S. C. 2), commonly known as the Sherman Act.

28. The aforesaid combination and conspiracy to monopolize have consisted of a continuing agreement and concert of action among the defendants and others to the Grand Jury unknown, the substantial terms of which have been and are:

(a) That the supplier defendants Firestone, Standard, Phillips, General Motors, and Mack would furnish money and capital to defendants National, American, and Pacific, and that said defendants would purchase and cause their operating companies to purchase substantially all of their requirements of tires, tubes, petroleum products, and busses from said supplier defendants, to the exclusion of products competitive therewith;

(b) That said money and capital made available by the supplier defendants would be utilized by defendants National, American, and Pacific to purchase or secure the control of, or a financial interest in, local transit systems located in the various states of the United States when the securing of such control or interest in said local transit systems would further the sale of and create an additional market for the products of the supplier defendants to the exclusion of products competitive thereto;

(c) That defendants National, American, Pacific, and their operating companies would not renew or enter into any contracts for the purchase, rental, or use of tires, tubes, motorbusses, or petroleum products from suppliers other than the supplier defendants without the consent of the supplier defendants servicing the territory wherein such products and equipment were to be used;

(d) That defendants National, American, and Pacific would not dispose of their interest in any operating company without requiring the party acquiring such operating company or equipment thereof to assume the obligation of continuing to purchase its requirements of tires, tubes, motorbusses, and petroleum products from the supplier defendants herein;

126 (e) That neither defendants National, American and Pacific, nor their operating companies would convert or change the equipment used by them from a type using the products sold by the supplier defendants to any other type without the consent of the supplier defendants herein:

(f) That neither defendants National, American and Pacific, nor their operating companies would purchase any new type of equipment which would use products other than the products sold by the supplier defendants without the consent of the supplier defendants herein;

(g) That the motorbus, petroleum, tire, and tube business of defendants National, American, Pacific, and their operating companies would be allocated and divided among the supplier defendants in an artificial, arbitrary and noncompetitive manner, as is more fully set forth in Paragraph 23 (b) herein.

(h) That as National, American, or Pacific acquired local transportation systems in the Eastern section of the United States, this market would be allocated to and preempted by a company selling petroleum products in the Eastern section of the United States.

29. During the period of time covered by this Indictment and for the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and other persons to the Grand Jury unknown, by agreement and concert of action, have done the things which, as hereinbefore alleged, they conspired to do, including but not limited to the following acts:

(a) Between January 1, 1939, and the date of the presentment of this Indictment, the supplier defendants purchased stock in defendants National, American, and Pacific, substantially all of the proceeds of which were used by said defendants to acquire control of or financial interests in local transit systems throughout the United States. Said stock purchases by the supplier defendants were in the approximate amounts as follows:

Name of Supplier Defendant:	Amount paid for stock purchased
Standard Oil Company, of California, Federal Engineering Corporation	$2,074,310.57
General Motors Corporation	3,190,802.32
Phillips Petroleum Company	1,574,064.82
Firestone Tire & Rubber Company	1,383,403.41
Mack Manufacturing Corporation	1,300,071.43

127 (b) The business of supplying tires, tubes, motorbusses, and petroleum products to the defendants National, American, Pacific, and their operating companies was and is divided among the supplier defendants as follows:

(1) The defendant Firestone was allocated and has supplied substantially all the automotive tires and tubes required by the operating companies of National, American, and Pacific;

(2) The defendants General Motors and Mack were allocated and have supplied substantially all the motorbusses used by defendants National, American, Pacific, and their operating companies. This motorbus business was divided between defendant General Motors and defendant Mack as follows: Defendant General Motors was allocated and it furnished approximately 85% of all the motorbusses required by defendant National and its operating companies as of August 2, 1939, and approximately 42.5% of all motorbusses required by any operating company in which defendant National thereafter required ownership, control, or a substantial financial interest. Defendant Mack was allocated and it furnished approximately 42.5% of all motorbusses required by the operating companies in which National acquired ownership, control, or a substantial financial interest after August 2, 1939. The remaining 15% of said motorbus business was reserved for emergency purchases or for disposition as agreed upon by the supplier defendants;

(3) The petroleum products business of National, American, Pacific, and their operating companies, was and is divided in such a manner that the defendant Standard provides substantially all the petroleum products requirements of the said defendants and their operating companies doing business on the Pacific Coast and in adjacent areas, including but not limited to the States of California, Washington, and Utah, and the defendant Phillips provides substantially all the petroleum products requirements of the defendants National and American and their operating companies located in the Midwestern section of the United States, including
but not limited to the States of Michigan, Indiana, Illinois,
128 Missouri, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, and Oklahoma.

(c) Defendants National, American, and Pacific have acquired a financial interest in or control of local transportation systems in cities and areas including but not limited to the following: Los Angeles, California; St. Louis, Missouri; Baltimore, Maryland; Spokane, Washington; Salt Lake City, Utah; and Tampa, Florida.

II. EFFECTS OF THE CONSPIRACY

30. The combination and conspiracy hereinbefore alleged have had, as intended by the defendants, the following effects, among others:

(a) Eliminating competition from other suppliers in the sale of busses, tires, tubes, and petroleum products to defendants National, American, Pacific, and their operating companies;

(b) Substantially and unreasonably restraining interstate trade and commerce in tires, tubes, motorbusses, and petroleum products sold to local transportation systems of the United States in which defendants National, American and Pacific have or acquire a financial interest;

(c) Substantially eliminating, suppressing, and excluding competition in the sale to defendants National, American and Pacific and their operating companies of tires, tubes, motorbusses, and petroleum products;

(d) Charging noncompetitive prices for tires, tubes, motorbusses, and petroleum products sold to defendants National, American, Pacific, and their operating companies;

(e) The nation-wide market of defendants National, American, Pacific, and their operating companies for tires, tubes, motorbusses, and petroleum products has been divided among and allocated to the supplier defendants herein.

III. JURISDICTION AND VENUE

31. The combination and conspiracy herein alleged has been carried out in part within the Southern District of California, Central Division. Pursuant to said combination and conspiracy and in furtherance thereof, defendant American, on or about January 10, 1945, the exact date being to the Grand Jury unknown,
129 purchased a controlling interest in the properties theretofore operated by the Los Angeles Railway Corporation of the City of Los Angeles, California. Defendant American made the purchase pursuant to a verbal understanding entered into between it and defendant Federal on or about December 21, 1944, the exact date being to the Grand Jury unknown, whereby defendant Federal supplied defendant American with the sum of $1,074,064.82 to be used with other funds in acquiring control of the Los Angeles Railway Corporation. Defendant Federal received 10,000 shares of 5% preferred and 13,333 shares of common stock in defendant American for said $1,074,064.82. On or about January 10, 1945, defendant American assumed and took over the control of the Los Angeles Railway Corporation, now known as the Los Angeles Transit Lines. Pursuant to the aforementioned oral understanding between defendants Federal and American, defendant Standard on or about May 7, 1945, was granted a con-

tract by the Los Angeles Transit Lines whereby defendant Standard secured the right to furnish 50% of the gasoline and Diesel fuel and all of the other petroleum products requirements of the Los Angeles Transit Lines for a period of ten years beginning June 1, 1945, said contract to remain in force after May 31, 1955, unless terminated by twelve months' written notice by either party thereto. Under said contract it was agreed that existing contracts covering the purchase of petroleum products by the Los Angeles Transit Lines from suppliers other than defendant Standard were to be terminated at their earliest possible termination date. On or about May 1, 1946, said contract was amended to provide that the Los Angeles Transit Lines should purchase all of its petroleum products requirements from defendant Standard and that the contract should remain in effect until April 30, 1956, and thereafter until terminated by twelve months' written notice from either defendant Standard or the Los Angeles Transit Lines.

Dated April 9, 1947

A True Bill:

JOHN M. MACADAM, *Foreman.*

William C. Dixon,
WILLIAM C. DIXON,
Special Assistant to the Attorney General.

130

Jesse R. O'Malley,
JESSE R. O'MALLEY,
Special Attorney.

Robert J. Rubin,
ROBERT J. RUBIN,
Special Assistants to the Attorney General.

Leonard M. Bessman,
LEONARD M. BESSMAN,
Special Attorney.

Wendell Berge,
WENDELL BERGE,
Assistant Attorney General.

James E. Kilday,
JAMES E. KILDAY,
Special Assistant to the Attorney General.

James M. Carter,
JAMES M. CARTER,
United States Attorney.

131 *Exhibit "B" to affidavit*

In the District Court of the United States Southern District of California, Central Division

No. 19270 Cr.

Honorable Leon R. Yankwich, Judge

United States of America, plaintiff

vs.

National City Lines, Inc., American City Lines, Inc., Pacific City Lines, Inc., Firestone Tire & Rubber Company, General Motors Corporation, Phillips Petroleum Company, Mack Manufacturing Corporation, Standard Oil Company of California, Federal Engineering Corporation, E. Roy Fitzgerald, Foster G. Beamsley, H. C. Grossman, Henry C. Judd, L. R. Jackson, B. F. Stradley, A. M. Hughes, defendants

Opinion

APPEARANCES

For the Government: Tom C. Clark, Attorney General of the United States; Wendell Berge, Assistant Attorney General; William C. Dixon, Special Assistant to the Attorney General; Robert L. Rubin, Special Assistant to the Attorney General; James E. Kilday, Special Assistant to the Attorney General; Jesse R. O'Malley, Special Attorney; Leonard M. Bessman, Special Attorney; James M. Carter, United States Attorney.

132 For the Defendants: National City Lines, Inc., American City Lines, Inc., Hodges, Reavis, Pantaleoni & Downey, New York; Pacific City Lines, Inc., E. Roy Fitzgerald, Foster G. Beamsley; O'Melveny & Myers, Louis W. Myers, Pierce Works, Jackson W. Chance, Los Angeles, California. Firestone Tire & Rubber Company and L. R. Jackson, Joseph Thomas, Akron, Ohio; Haight, Trippet, Syvertson, Oscar A. Trippet, Frank B. Yoakum, Sr., Los Angeles, California. General Motors, Cosgrove, Clayton, Cramer & Diether, T. B. Cosgrove, Leonard A. Diether, Los Angeles, California. Phillips Petroleum Company, Finlayson, Bennett & Morrow, H. T. Morrow, Los Angeles, California. Mack Manufacturing Corporation, Wright & Millikan, Charles E. Millikan, Los Angeles, California, Standard Oil Corporation of California,

Lawler, Felix & Hall, John M. Hall. Federal Engineering Corporation, Henry C. Judd, Los Angeles, California.

133 YANKWICH, District Judge:

The defendants, indicted for violation of the Sherman anti-trust law, have moved to transfer the proceeding to another district under a provision of the Federal Criminal Rules of Procedure, which reads:

"The court upon motion of the defendant shall transfer the proceeding as to him to another district or division, if it appears from the indictment or information or from a bill of particulars that the offense was committed in more than one district or division and if the court is satisfied that in the interest of justice the proceeding should be transferred to another district or division in which the commission of the offense is charged."[1]

I

THE PRACTICE WHICH LED TO THE CHANGE

This provision is an innovation in federal criminal procedure. Up to the time of its enactment, when an offense was committed in more than one district, the Government had the choice of the district for prosecution.

The Constitution provides that the trial of a criminal offense shall be held in the state where the offense was committed.[2] The Bill of Rights guarantees trial in the state and district wherein the crime was committed.[3] Under the Constitution, the Congress is given the right to designate the actual place of trial when the offense is no committed within any state.[4] Because, under the conspiracy statute,[5] a conspiracy can be prosecuted in any state or district in which an overt act is committed, the practice developed of choosing a preferred district. The choice was that of the Government. And, although the courts, at times, pointed out the unfairness of the procedure, the defendant was helpless in the matter. Well might the Supreme Court thunder, as

134 it did in a well-known case against the injustice of taking a California resident to be tried in the District of Columbia for conspiracy. Bu the practice continued. The words of Mr. Justice Brown ring true even today:

"But we do not wish to be understood as approving the practice of indicting citizens of distant States in the courts of this District, where an indictment will lie in the State of the domicil of such

[1] Sec. 21 (b) Federal Rules of Criminal Procedure.
[2] United States Constitution, Article III, Section 2, Clause 3.
[3] Sixth Amendment, Constitution of the United States.
[4] Constitution of the United States, Article III, Sec. 2, Clause 3.
[5] 18 U. S. C. A. 88.

person, unless in exceptional cases where the circumstances seem to demand that this course shall be taken. To require a citizen to undertake a long journey across the continent to face his accusers, and to incur the expense of taking his witnesses, and of employing counsel in a distant city, involves a serious hardship to which he ought not to be subjected, if the case can be tried in a court of his own jurisdiction."[6]

It was this practice, known to many of the members of the Advisory Committee, some of which had been in Government service, which resulted in the adoption of this provision of the rules, Judge Learned Hand of the Second Circuit, during the proceedings of the Institute conducted before the New York University School of Law, in introducing a former Assistant Attorney General of the United States, who had been a member of the Advisory Committee, injected these witty remarks about the proclivity of prosecuting everything in the federal courts by conspiracy indictment:

"Before he begins * * * they used to speak of indictments when I was a district judge as if indictments were a sacred mystery. Everything was prosecuted by conspiracy. In the Federal courts, as you know, there are practically no other crimes than the use of mails to defraud and that is a conspiracy. You never found what the conspiracy—that was part of the conspiracy—God himself never knew."[7]

And before the same Institute, the late Judge George Z. Medalie of the Court of Appeals of New York, who had been United States Attorney for the Southern District of New York, and was also a member of the Advisory Committee, stated in very forceful language, the injustice of the rule which permitted the Government to hail defendants in a conspiracy case before tribunals far removed from the place of their residence where the conspiracy, if any existed, was hatched:

"Think of what else we have done. It is really a scandal in the Federal Administration, *the frequent robbing of the Southern District of New York of its rightful jurisdiction.* All large scale financial or business crimes are committed in the Southern District of New York, and they ought to be tried elsewhere; and I feel as you would have with me, if you had preceded me in office—you take these anti-trust cases and other cases involving business operations where indictments are found by the government—a man is blissfully attending to his business in Chicago, committing this, that or the other crime, or doing thi that or the other good deed, depending on his outlook; and ne

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[6] Hyde v. Shine, 1905, 199 U. S. 62, 78.
[7] Federal Rules of Criminal Procedure, New York Institute, 1946, page 160.

finds he must go down somewhere in New Mexico, because since his business is nation-wide, you can pick out any jurisdiction in the country and indict him there.

"Now that is pretty shabby business for the great government of the United States to indulge in. It ought not to be done. So we have another change of venue rule, that if it appears from the indictment or the bill of particulars that the crime has been committed or claimed to have been committed in more than one district, the judge in the district where the indictment has been found can order—and I am sure judges are fair and are not looking for these extra jobs—the trial in the district where it is most convenient that the case be tried.

"If, for example, *a business' headquarters are in Chicago, everybody is there, every book and record is there, practically every witness is there on both sides, then try it in Chicago. That is the decent thing to do and accords better with the dignity of our great government that it be done that way, rather than the shabby devices indulged in where we lose our status and our self respect.* Government attorneys cannot, if they appraise themselves properly, afford to engage in that kind of thing; and perhaps it will diminish the abuse, if in fact, it doesn't succeed in its complete abolition".[8] [Italics added.]

Others, who like Judge Medalie, had also been in the Government service, have expressed themselves as forcefully.[9] One of the members of the Advisory Committee has made the charge that the practice makes it possible

"for the Government to shop around for an unduly favorable locality and judge".[10]

136 Judge Alexander Holtzoff, who was the Secretary of the Committee, in his most recent commentary on the rules has said about this rule that

It creates a certain degree of equality between prosecution and defense in the choice of place of trial".[11] [Italics added.]

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[8] Federal Rules of Criminal Procedure, New York Institute, 1946, pp. 274–275.

[9] See the Remarks of G. Aaron Youngquist, another member of the Advisory Committee, and a former Assistant Attorney General, in Federal Rules of Criminal Procedure, New York Institute, 1946, pp. 169–170. Wendell Berge, former head of the Anti-trust Division of the Department of Justice, considered this change a "desirable" one. See, Wendell Berge, The Proposed Federal Rules of Criminal Procedure, 42 Michigan Law Review, 1943, pp. 353, 378–379. For other comments, see Robert F. McGuire, Proposed New Federal Rules of Criminal Procedure, 1943, 23 Oregon Law Review, 65, 66; Judge Alexander Holtzoff, Reform of Federal Criminal Procedure, 1944, 3 Federal Rules Decisions, 445, 452.

[10] Professor George H. Dession, New Federal Rules of Criminal Procedure, 1947, 56 Yale Law Journal, pp. 197, 225. Another writer on the subject has made the accusation that the Government in selecting the place for indictment in certain well-known cases, such as United States v. Socony Vacuum Company, 1940, 310 U. S. 150; United States v. Safeway Stores, 1943, D. C. Kan., 51 Fed. Sup. 448; Frankfort Distilleries v. United States, 1944, 10 Cir., 144 F(2) 824, chose

"a tribunal foreign to the defendants who happen to be people of influence. It was calculated by the Government officials in those cases that the defendants would be at a disadvantage in the district chosen for trial." (Wm. Scott Stewart, Federal Rules of Criminal Procedure, 1945, p. 190.)

[11] See, Holtzoff, Federal Criminal Procedure, 37 Journal of Criminal Law and Criminology, 1946, pp. 109, 116.

In my own commentary on the new rules, I stressed the importance of this departure and pointed to the hardships, inconvenience and injustice resulting, at times, from the present practice.[12]

As the new rule is the sole authority for removal from one district to another,[13] its scope must be determined from its language and the considerations which led to its enactment. In lodging the discretion in the trial judge, the Committee gave wide latitude to its exercise by stating that the transfer "shall be" granted when the judge is satisfied it is "in the interest of justice".[14] There is thus an element of obligatoriness in the provision ("shall") once a satisfactory showing is made. And the showing is subordinated to the condition that it convince the judge that the transfer is "in the interest of justice."

II

WHAT IS "IN THE INTEREST OF JUSTICE?"

The phrase "in the interest of justice," like the analogous one which occurs often in statutory enactments—"in the furtherance of justice," has a broad meaning. It implies conditions which assist, or are in aid of or in the furtherance of, justice. Both call for the doing of things which bring about the type of justice which results when law is correctly applied and administered. They import the exercise of discretion which considers both the interests of the defendant and those of society. When commanded by a statute, they do not attempt to determine, in advance, the type of judicial action to be taken.[15] As said by the Supreme Court in a well-known case:

"The term 'discretion' denotes the absence of a hard and fast rule.
The Styria v. Morgan, 186 U. S. 1, 9. When invoked as a
137 guide to judicial action it means a sound discretion, that is
to say, a discretion exercised not arbitrarily or wilfully, but with a regard to what is right and equitable under the circumstances and the law, and directed by the reason and conscience of the judge to just result".[16]

So it is quite evident that, in each case, we are called upon to determine whether, under the particular circumstances of the case, a transfer would be in the interest of justice. The abuses which led to the adoption of the rule give us criteria by which to determine whether the discretion should or should not be exercised in a particular case. In my own commentary, I used the

[12] Yankwich, The New Federal Rules of Criminal Procedure, 1946, pp. 159, 192.
[13] See, Semel v. United States, 1946, 5 Cir., 158 F. (2) 229, 231.
[14] Rule 21 (b) Federal Rules of Criminal Procedure.
[15] Wells Fargo & Co. v. McCarthy, 1907, 5 C. A. 301, 318; People v. Disperati, 1909, 11 C. A. 469, 476.
[16] Langnes v. Green, 1931, 282 U. S. 531, 541; see, Yankwich, Increasing Judicial Discretion in Criminal Proceedings, 1941, 1 F. R. D. 746.

terms "hardship" and "inconvenience".[17] We are not without judicial sanction for taking these two factors into consideration. Courts have held that the indictment of a person away from his domicile which requires him to (1') go to a distant place, (2') to employ counsel in a distant city and (3') to bring his witnesses from afar are hardships to be considered.[18] So is also, in the case of a corporate body, the fact that (4') its business headquarters are in another city, and (5') its records are there.[19]

There is also what Judge Medalie has called (6') "the robbing" of another district "of its rightful jurisdiction."

These considerations apply whether the defendant be poor or rich, a small or large corporation. Neither the rules nor our system would justify the elimination of any of these elements merely because the defendants, or some of them, may be persons of great wealth or corporations with large resources.

The new rules give as their purpose "to provide for the just determination of every criminal proceeding." And we are enjoined to construe the rules "to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay."[20]

138 So in this rule, also, we have an indication as to some of the elements—(7') fairness and (8') elimination of unjustifiable expense—to be considered in determining the meaning of the phrase "in the interest of justice." And the Supreme Court has recognized most of these elements—*fairness and the vexatiousness and oppressiveness of a trial away from the domicile of a defendant, whether he be an individual or a corporation*, as controlling in civil cases, the application of the doctrine of *forum non conveniens*, warranting a court in refusing to accept jurisdiction.

In a recent leading case on the subject,[21] Mr. Justice Douglas wrote for the Court:

"We mention this phase of the matter to put the rule of *forum non conveniens* in proper perspective. It was designed as an 'instrument of justice.' Maintenance of a suit away from the domicile of the defendant—whether he be a corporation or an individual—might be *vexatious or oppressive*. An adventitious circumstance might land a case in one court when *in fairness* it should be tried in another." [Italics added.]

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[17] Yankwich, The New Federal Rules of Criminal Procedure, 1946, pp. 159, 192.

[18] Hyde v. Rhine, 1905, 199 U. S. 62, 78; In Kiley v. Meckler, 1928, 57 N. D. 217, 220 N. W. 926, 928, the Court, in interpreting a state statute, allowing a change of venue, when (among other things) "the ends of justice would be prompted by the change," says:
"There is nothing to show promotion 'of the ends of justice,' when practically all the witnesses live in Burleigh County and one other is adjacent to Burleigh County."

[19] See Rep. of Judge Medalie already quoted and to be found in Federal Rules of Criminal Procedure, New York Institute, p. 275.

[20] Rule 2, Federal Rules of Criminal Procedure.

[21] Williams v. Green Bay & W. R. Ry. Co., 1946, 326 U. S. 550, 555.

III

THE FACTS BEHIND THE MOTION

Because of the newness of the provision for transfer, there was need for clearing the ground legally before considering the facts upon which the motion is based.

The motion made by the nonresident defendants in the case and joined in by Standard Oil Company of California, Federal Engineering Corporation and Henry C. Judd, seeks to transfer the proceeding to the United States District Court for the Northern District of Illinois, Eastern Division.

On April 9, 1947, the Grand Jury of this District returned an indictment against a group of corporations and individuals, charging two counts of violation of the Sherman antitrust law.[22] The indictment gives the States of the organization and the principal place of business of the corporations as follows:

139 Corporation	State of organization	Principal place of business
National City Lines, Inc	Delaware	Chicago.
American City Lines, Inc	Delaware	Chicago.
Pacific City Lines, Inc	Delaware	Oakland.
Standard Oil Company of California	Delaware	San Francisco.
Federal Engineering Corp	California	San Francisco.
Phillips Petroleum Company	Delaware	Bartlesville, Oklahoma.
General Motors Corporation	Delaware	Detroit, Mich.
Firestone Tire & Rubber Co	Ohio	Akron, Ohio.
Mack Manufacturing Corp	Delaware	New York.

The individual defendants, with their address and the concern with which they are associated are thus given in the indictment:

Defendant	Address	Defendant corporation with which associated
E. Roy Fitzgerald, President and Director	Chicago, Ill	National.
Foster G. Beamsley, Vice Pres. and Director	Chicago, Ill	National.
H. C. Grossman, Asst. Secretary	Detroit, Mich	General Motors.
Henry C. Judd, Treasurer	San Francisco	Standard and Federal.
L. R. Jackson, Vice President	Akron, Ohio	Firestone.
B. F. Bradley, Secretary-Treasurer	Bartlesville, Okla	Phillips.
A. M. Hughes, Vice President and Director	Bartlesville, Okla	Phillips.

The conspiracy charged in Count I of the Indictment is a conspiracy to acquire and monopolize transportation systems by the three transportation companies, National, American and Pacific, through the control of operating companies in a large num-
140 ber of cities, among them Baltimore, Maryland; Tampa, Florida; Mobile, Montgomery, Alabama; Beaumont, Port Arthur, El Paso, Texas; Aurora, Elgin, Bloomington, Normal,

[22] 15 U. S. C. A., Secs. 1, 2.

Champaign, Urbana, Danville, Decatur, East St. Louis, Joliet, Quincy, Illinois; Terre Haute, Indiana; Jackson, Kalamazoo, Pontiac, Saginaw, Michigan; Canton, Portsmouth, Ohio; Burlington, Cedar Rapids, Ottumwa, Iowa; Tulsa, Oklahoma; Lincoln, Nebraska; St. Louis, Missouri; Jackson, Mississippi; Salt Lake, Utah; Everett, Spokane, Washington; Sacramento, Eureka, Fresno, Glendale, Pasadena, San Jose, Stockton, Los Angeles, Oakland, and Long Beach, California.

The manner of so doing and the position of the other companies, known as "supply companies" in the conspiracy, is stated in Count I of the Indictment in this manner:

"knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy to acquire or otherwise secure control of or acquire a substantial financial interest in a substantial part of the companies which provide local transportation service in the various cities, towns, and counties of the several states of the United States, and to eliminate and exclude all competition in the sale of motorbusses, peroleum products, tires, and tubes to the local transportation companies owned or conrolled by or in which National, American, or Pacific had a substantial financial interest, and to local transportation companies in which said companies acquired or, in the future, acquire ownership, control, or a substantial financial interest."

Towards this end certain of the defendants are charged with supplying money to the three transportation companies, to enable them to acquire control of these systems and, in return, entering into exclusive agreements to supply exclusively to the subsidiary operating companies certain equipment, petroleum products, and other supplies and to eliminate other suppliers from the field.

Count II alleges substantially the same facts, but charges a violation of Section 2 of the Act. The nature of the violation is stated to be:

"to monopolize part of the interstate trade and commerce of the United States, to wit, that part consisting of the sale of motorbusses, petroleum products, tires, and tubes used by local transportation systems in those cities, towns, and counties in which defendants National, American, and Pacific owned, controlled, or had a substantial financial interest in, or acquired, or in the future, acquire ownership, control, or a substantial financial interest in, said local transportation systems."

141 It is quite apparent from the indictment that "the head and front of the offending" is National City Lines, Inc., and its subsidiaries American City Lines, Inc., and Pacific City Lines, Inc., and especially National, which owns and controls the two others. National has its main place of business in Chicago, Illi-

nois. All its records are located there. Two of its principal officers, whose legal residence is Chicago, have been indicted. Its thirty-four operating subsidiaries, which operate transportation systems in various cities, are operated and controlled from Chicago. The transactions, which form the basis of the two counts of the indictment, took place chiefly in Chicago. The agreements with the other defendants, which the Government charges had the unlawful monopolistic effect and which are the gist of the offense, were negotiated in Chicago over a long period of years. The trial of the action—as appears from the affidavits of one of the defendants, E. Roy Fitzgerald, filed on his behalf and on behalf of his codefendant, Foster G. Beamsley—would require the attendance over a period of months of some of its keymen, including the two defendants named. This would result in a complete dislocation of its business at the place where it can least afford it—*at the central place of control.* The same conditions exist as to the other nonresident defendants, the suppliers, such as Firestone, General Motors, Mack, and Phillips—that is, location of its chief business outside of the Southern District of California, nonresidence of executive officers and men in managerial positions who are needed as witnesses, books, and records kept outside the district, agreements entered into without the district and greater proximity to Chicago, Illinois, than to Los Angeles, California.

Standard Oil Company of California, Federal Engineering Corporation, and Henry C. Judd feel that, although their main place of business is California,

"It is essential for the protection of Standard and Federal, as well as all other defendants, that the case be tried at a location where the evidence to refute this conspiracy *may be produced with the least diminution or impairment.* Mr. Fitzgerald's affidavit shows that such location is Chicago." [Italics theirs.]

It is true, as the Government's affidavit asserts, that these companies, excepting Phillips, conduct certain operations in the State. That is, however, unimportant. The question to determine is whether, under the facts in the case, transfer is called for "in the interest of justice." And this can only be determined by considering the facts just alluded to in the light of the principles discussed in the first two portions of this opinion.

142 The facts, in the main, are undisputed. In truth, the Government, at first, did not deny the affidavit filed on behalf of National. Realizing, at the oral argument, that they may have treated the matter lightly, the Government sought and obtained leave to file a counteraffidavit. This counteraffidavit does not, on the whole, deny the facts relating to National and to the other nonresident defendants. In substance, it asserts that many of the Government witnesses are local and that, in the presen-

tation of its case before the Grand Jury, it used many documents which were supplied locally. Granted that this is so, how can it be assumed, in the face of sworn statements to the contrary, that documentary and other proof to be presented by the defendants is available locally?

The factual situation which the Government presents to a grand jury is, of necessity, one-sided. Of the essence of the crime charged is criminal intent. Even the fairest presentation of a prosecutor's case may not show the real motivation of the acts being investigated. In this connection, I refer to the words of a great judge:[23]

"I am aware of course that the word intent as vaguely used in ordinary legal discussion means no more than knowledge at the time of the act that the consequences said to be intended will ensue. Even less than that will satisfy the general principle of civil and criminal liability. A man may have to pay damages, may be sent to prison, at common law might be hanged, if at the time of his act he knew facts from which common experience showed that the consequences would follow, whether he individually could foresee them or not. But, when words are used exactly, a deed is not done with intent to produce a consequence unless that consequence is the aim of the deed. It may be obvious, and obvious to the actor, that the consequence will follow, and he may be liable for it even if he regrets it, but he does not do the act with intent to produce it unless the aim to produce it is the proximate motive of the specific act, although there may be some deeper motive behind."

Acts and contemporaneous declarations of defendants, unrevealed by the Government's documentation, may change entirely the complexion of the case. And the Government is not in a position to say that it has in its possession and can produce through witnesses and documentary evidence locally available all
143 the facts bearing on the intent of the defendants. So that even if we assume that the Government does not need and will not produce outside witnesses or documents located outside of California, this does not contradict the sworn statements of the officers of the defendant companies that their defense will be grounded on the testimony of witnesses who will have to be taken away from their head offices and on documentary evidence and company records which will have to be transported to this district. Firestone alone estimates that sixteen of its officers, executives, or members of its managerial staff, residents of Akron and Chicago, may be needed as witnesses in the case.

[23] Holmes, J., in his dissent in Abrams v. United States, 1919, 250 U. S. 616, 626–627.

The Government's affidavit laid much stress on the fact that the local operating subsidiary enjoys a measure of local control and that the largest restraint in the free flow of products resulted from the acquisition of the local transportation system. The emphasis placed on the size of the Los Angeles transaction in the Government's affidavit and at the oral argument does not conform to the pattern of the indictment.

Counsel for the Government seem to think that because the transportation system acquired in Los Angeles is the largest controlled by the system, venue is properly laid here. They insist that such acquisition was—as they put it at the oral argument—"the flowering of the conspiracy." But none of the operating subsidiaries in California, in or out of Los Angeles County, have been indicted. Nor are they designated as coconspirators, as is sometimes done in cases of this character when the Government chooses to prosecute certain of the conspirators only. They are merely vehicles through which the channeling of petroleum products, tires, and other equipment was achieved. The agreements by which this was accomplished were engineered by the defendants outside the district. Although one overt act is alleged to have occurred in the district, in a prosecution of this character, an overt act is not necessary.[24] The agreement is the essence of the offense.[25] And the proof of that agreement lies in the actions of the controlling companies—National and the large suppliers—who are charged to have agreed and conspired with them.

The location of the operating companies to whom the products were supplied, as a result of this agreement, has nothing to do with the offense. Were the Government seeking—through a suit in equity—to divest any of the defendant companies of their subsidiaries or to put an end to illegal agreements, the location of the business of the operating subsidiaries might have some bearing on venue. Even then, facts such as exist here would warrant the court in declining to take jurisdiction.[26] But in a case like the present one, a prosecution for criminal conspiracy to restrain and monopolize commerce, the location of the operating companies has no bearing whatsoever on the question of forum.

144

Under the circumstances, I feel that the defendants have shown that the eight elements which, in the first portion of this opinion

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[24] Nash v. United States, 1913, 229 U. S. 373, 378; United States v. Socony-Vacuum Oil Co., 1940, 310 U. S. 150, 224–225; United States v. New York Great Atlantic etc. Co., 1943, 5 Cir., 137 F. (2) 459, 464.

[25] United States v. Trenton Potteries, 1926, 273 U. S. 392, 402; United States v. Socony-Vacuum Oil Co., 1940, 310 U. S. 150, 252; United States v. General Motors Corp., 1941, 7 Cir., 121 F. (2) 376, 404–405.

[26] Rogers v. Guaranty Trust Co., 1932, 288 U. S. 123, 130–131; Williams v. Green Bay & W. R. Ry. Co., 1946, 326 U. S. 550, 555; Koster v. Lumbermen's Mutual Casualty Co., 1947, 91 Law Ed. 764; Gulf Oil Co. v. Gilbert, 1947, 91 Law Ed. 755, 759.

I indicated to be the criteria for determining whether a requested transfer would be in the interest of justice, exist in this case.

We have here a prosecution which would compel the chief defendants (1′) to go to a place distant from the location of their business; (2′) to employ or bring counsel to a distant city; (3′) to bring witnesses from afar; (4′) their business headquarters are in another city; (5′) most of the records which relate to the transaction on which the indictment is based are there. Under the circumstances, (7′) fairness would be absent and (8′) the defendants would be put to unjustifiable expense, if we deprived the United States District Court for the Northern District of Illinois, Eastern Division (6′) "of its rightful jurisdiction."

I do not question the motive of the Government in instituting the prosecution in this district.

But I am satisfied that a trial here would impose unnecessary hardships on the defendants and entail unjustifiable expense which it is the object of the new rules of criminal procedure, and especially of the rule under discussion, to avoid. Altogether the facts spell out the vexatiousness and oppressiveness which the Supreme Court has warned us to eschew in matters of this character.[27]

The motion of the defendants to transfer the cause to the Northern District of Illinois, Eastern Division, is, therefore, granted.

Dated this 14th day of August 1947.

LEON R. YANKWICH,
U. S. District Judge.

145 *Exhibit "C" to affidavit*

In the District Court of the United States, Southern District of California, Central Division

No. 19270–Cr.

Honorable LEON R. YANKWICH, Judge

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., ET AL., DEFENDANTS

ORDER ON MOTIONS

The various motions of the defendants heretofore argued and submitted are now decided as follows:

[27] See cases cited in Note 26 and the language of Mr. Justice Douglas already quoted from Williams v. Green Bay & W. R. Ry. Co., 1946, 326 U. S. 550, 555.

(1) The motions of the defendants made under Rule 21 (b) of the Federal Rules of Criminal Procedure to transfer the above proceeding to the United States District Court for the Northern District of Illinois, Eastern Division, is granted and the said cause is hereby transferred to said court for all further proceedings. The Clerk of this court is ordered to transmit to the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, all papers in the proceeding as required by Subdivision (c) of Rule 21.

The Court files herewith an opinion setting forth the grounds for this ruling and now states that the Court is satisfied that, in the interest of justice, the proceeding should be transferred to the above-named district and that prosecution should continue therein.

(2) The Order heretofore entered on the 15th day of July 1947, submitting the motion of the defendant American City Lines, Inc., to dismiss the indictment as to it is vacated and
146 the said motion is referred to the United States District Court for the Northern District of Illinois, Eastern Division for action thereon.

(3) The Order heretofore entered on the 15th day of July 1947, submitting the motions of all the defendants for bills of particulars is now vacated and said motions are referred to the United States District Court for the Northern District of Illinois, Eastern Division, for action thereon.

Having reached the conclusion that the cause should be transferred to another district, I should not bind such court by any ruling on these motions, but leave to the court which will try the case complete freedom of action.

As indicated at the time of oral argument, while the motion to dismiss presents a question of law, the point made is not so clearly established as to avoid the possibility of judges placing different interpretations upon the Delaware statute relating to survival of actions. And, as to the bill of particulars, the granting of a bill of particulars is purely discretionary. Judges may differ as to the scope of such bill. Therefore, the judge who will try the case is in the best position to determine whether a bill of particulars should be granted, and if so, as to what matters.

Dated this 14th day of August 1947.

LEON R. YANKWICH,
U. S. District Judge.

147 In the District Court of the United States, Southern District of California, Central Division

Civil Action No. 6747–Y

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., ET AL., DEFENDANTS

[File endorsement omitted.]

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA;
County of Los Angeles, ss:

Harley Walther, being first duly sworn, deposes and says:

Affiant is and was, at all times herein mentioned, a citizen of the United States and a resident of the State of California, County of Los Angeles, over the age of twenty-one (21) years, and not a party to or interested in the above action; affiant's business address is 900 Title Insurance Building, 433 South Spring Street, Los Angeles 13, California.

On August 27, 1947, affiant served the Amendment and Supplement to Motion to Dismiss of defendants National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc., noticed for hearing September 15, 1947, and Affidavit of Jackson W.
148 Chance in support thereof upon each counsel named below by depositing true copies thereof in a United States mail box at Los Angeles, California, in sealed envelopes with postage thereon fully prepaid and addressed as indicated below: William C. Dixon, Jesse R. O'Malley, Robert J. Rubin, and Leonard M. Bessman, Antitrust Division, Department of Justice, 1602 U. S. Postoffice & Courthouse, Los Angeles 12, California. Lawler, Felix & Hall, Felix T. Smith, and John M. Hall, 800 Standard Oil Building, Los Angeles 15, California. Henry M. Hogan, Cosgrove, Clayton, Cramer & Diether, T. B. Cosgrove, and Leonard A. Diether, 1031 Rowan Building, Los Angeles 13, California. Finlayson, Bennett & Morrow and H. T. Morrow, 837 Van Nuys Building, 210 West 7th Street, Los Angeles 14, California.
149 Haight, Trippet & Syvertson and Oscar A. Trippet, 1140 Rowan Building, 458 South Spring Street, Los Angeles 13, California. Wright and Millikan and Charles E. Millikan, 1125 111 West 7th Building, Los Angeles 14, California.

The addresses indicated are the last known addresses of each of said counsel and there is regular communication by mail between the place of mailing and the place so addressed.

Harley Walther.
HARLEY WALTHER.

Subscribed and sworn to before me, this 28th day of August 1947.

[NOTARIAL SEAL] RUBY E. SLOANAKER,
Notary Public in and for said County and State.

150 In the District Court of the United States for the Southern District of California, Central Division

[File endorsement omitted.]
[Title omitted.]

Amendment and supplement to notice of motion to dismiss filed by Defendant Phillips Petroleum Company.

Filed Aug. 29, 1947

Defendant Phillips Petroleum Company hereby amends and supplements its Notice of Motion to Dismiss heretofore filed herein, and its Proposed Motion to Dismiss noticed and set for hearing on September 15, 1947, by adding thereto, as a further ground of the said motion to dismiss, the following additional ground, as follows:

That the above-entitled court did on August 14, 1947, make and enter an Order in that certain proceeding then pending in said Court and being entitled "United States of America v. National City Lines, Inc., et al., Defendants," being Criminal No. 19270 in the files of said Court, transferring said proceeding to the United States District Court for the Northern District of Illinois, Eastern Division (Chicago); that the transactions upon which the indictment was returned in said No. 19270 are identical with the transactions set forth and alleged in the Complaint on file in the above-entitled suit; and that it is not in the interests of
151 justice that this defendant be required to defend this equity suit at Los Angeles, California, when the Criminal proceedings involving the same transactions has been transferred to and is now pending in the United States District Court for the Northern District of Illinois, Eastern Division (Chicago).

Said amendment and supplement is and will be passed upon the Complaint herein, upon said Notice of Motion, the Motion therein

noticed, upon the Indictment in the above mentioned criminal action, upon all documents mentiond in this defendant's said Notice of Motion, upon the affidavit of Jackson Chance and all other memoranda and documents filed herein on behalf of defendant National, and the documents in said affidavit incorporated by reference, and upon the Opinion and Order of the Court, copies of which are attached to the defendant National's Amendment and Supplement to its Motion to Dismiss filed herein; all of which, to avoid repetition, and for the Court's convenience, being hereby adopted and relied upon as though attached hereto.

Dated at Los Angeles, California, August 27th, 1947.

H. T. Morrow and
Finlayson, Bennett & Morrow,
By H. T. Morrow,
Attorneys for defendant Phillips Petroleum Company.

It is ordered that the Notice of Motion to Dismiss of Phillips Petroleum Company heretofore filed in the above entitled action and the proposed motion therein noticed for hearing on September 15, 1947, may be amended and supplemented as set forth above.

Dated at Los Angeles, California, August 29, 1947.

Leon R. Yankwich,
United States District Judge.

Received copy of the within this 29th day of August 1947.

Leonard Bessman,
Attorney for Pl.

152 In the District Court of the United States for the Southern District of California, Central Division

Civil No. 6747-Y

[File endorsement omitted.]
[Title omitted.]

Notice of amendment and supplement to motion to dismiss by Firestone Tire & Rubber Company

Filed Aug. 29, 1947

To Plaintiff and Its Attorneys:

Defendant The Firestone Tire & Rubber Company hereby amends and supplements its Motion to Dismiss heretofore filed and

noticed for hearing on September 15, 1947, by adding a further ground of said motion as follows:

The above-entitled court did on August 14, 1947, make and enter an order in that certain proceeding then pending in said court entitled "United States of America v. National City Lines, Inc., et al., Defendants," being Criminal No. 19270 in the files of said court, transferring said proceeding to the United States District Court for the Northern District of Illinois, Eastern Division (Chicago); that the transactions upon which the indictment was returned in said Case No. 19270 are identical with transactions set forth and alleged in the complaint on file herein, and that
153 it is not in the interests of justice that defendant be required to defend this equity suit at Los Angeles, California, when the criminal proceeding involving the same transactions has been transferred to and is now pending in the United States District Court for the Northern District of Illinois, Eastern Division (Chicago).

This amendment and supplement to defendant's Motion to Dismiss is based upon the complaint on file herein, upon said Notice of Motion to Dismiss, upon this Notice of Amendment and Supplement to said motion, upon the affidavit of E. Roy Fitzgerald, and upon the Memorandum of Points and Authorities of the defendant National City Lines, Inc. (which said affidavit and points and authorities have heretofore been filed herein), upon the affidavits of H. H. Hollinger and Joseph W. Thomas, hereafter to be filed herein, and upon the affidavit of Jackson W. Chance and the exhibits accompanying said affidavit, which affidavit is dated August 27, 1947, and is now on file in this cause and which is by reference incorporated herein.

Dated August 29, 1947.

JOSEPH THOMAS,
HAIGHT, TRIPPET & SYVERTSON,
By F. B. YOAKUM, Jr.,
Attorneys for Defendant,
The Firestone Tire & Rubber Company.

It is ordered that the Motion to Dismiss heretofore filed herein and noticed for hearing on September 15, 1947, may be amended and supplemented as above set forth.

Dated August 29, 1947.

LEON R. YANKWICH,
United States District Judge.

Received copy of the within this 29th day of Aug. 1947.

LEONARD BESSMAN,
Attorney for Plaintiff.

154 In the District Court of the United States, Southern District of California, Central Division

[File endorsement omitted.]
[Title omitted.]

Amendment and supplement to notice of motion by Mack Manufacturing Corporation to dismiss

Filed Aug. 29, 1947

To the United States of America, Plaintiff in the above-entitled action, and to its attorneys of record:

You are hereby notified that the motion of Mack Manufacturing Corporation to dismiss the complaint in the above-entitled action, heretofore noticed for hearing for September 15, 1947, by notice of motion dated the 7th day of August 1947, and heretofore served and filed, will be amended and supplemented by adding to the grounds of said motion to dismiss (designated in said notice of motion as Motion No. 1) the following additional ground:

That the above-entitled Court did, on August 14, 1947, make and enter an order in that certain proceeding then pending in said Court and being entitled "United States of America v. National City Lines, Inc., et al., Defendants," being
155 Criminal No. 19270 in the files of said Court, transferring said proceeding to the United States District Court for the Northern District of Illinois, Eastern Division (Chicago); that the transactions upon which the indictment was returned in said No. 19270 are identical with the transactions set forth and alleged in the complaint on file in the above entitled suit; and that it is not in the interests of justice that this defendant be required to defend this equity suit at Los Angeles, California, when the criminal proceeding involving the same transactions has been transferred to and is now pending in the United States District Court for the Northern District of Illinois, Eastern Division (Chicago).

The foregoing additional ground of said motion, and said Motion No. 1 as amended by the inclusion of the foregoing amendment and supplement, will be based upon the complaint on file herein; upon said notice of motion dated the 7th day of August 1947; upon this notice; upon the affidavit of C. W. Haseltine and the memorandum of points and authorities heretofore filed; upon the affidavit of E. Roy Fitzgerald heretofore filed in the above entitled proceeding in support of the motion of National City

Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc., to dismiss complaint herein; and upon the affidavit of Jackson W. Chance and the exhibits attached thereto, filed in the above-entitled proceeding in support of amendment and supplement to motion to dismiss filed on behalf of said defendants National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc.

Dated August 28, 1947.

WRIGHT AND MILLIKAN,
LOYD WRIGHT,
Charles E. Millikan.
By CHARLES E. MILLIKAN.
Attorneys for defendant
Mack Manufacturing Corporation.

156 It is ordered that the foregoing and within amendment and supplement to notice may be filed.

LEON R. YANKWICH,
United States District Judge.

Received copy of the within Amendment this 29 day of August, 1947.

W. C. DIXON,
Attorney for U. S.

157 In the District Court of the United States for the Southern District of California, Central Division

Civil Action No. 6747-Y

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., DEFENDANTS

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Mavine S. Basinger, being first duly sworn, deposes and says: That she is a citizen of the United States and a resident of Los Angeles County, California; that her business address is 1031 Rowan Building, 458 South Spring Street, Los Angeles, California; that she is over the age of eighteen years, and is not a party to the above-entitled action;

That on September 2, 1947, she deposited in the United States Mails at Los Angeles, in an envelope bearing the requisite postage, a copy of "Joinder of Defendant, General Motors Corporation in

Amended and Supplemental Motion to Dismiss" addressed
158 to: William C. Dixon, Esq.; Jackson W. Chance, Esq., O'Melveny & Myers, Oscar Trippet, Esq., Haight, Trippet & Syvertson; Hubert T. Morrow, Esq., Bennett, Finlayson & Morrow; Charles E. Millikan, Esq., Wright & Millikan; John M. Hall, Esq., Lawler, Felix & Hall, at their last known address, at which place there is a delivery service by United States Mails.

MAXINE S. BASINGER.

Subscribed and sworn to before me this 2nd day of September 1947.

ANNABEL SMITH,
Notary Public in and for said County and State.

159 In the District Court of the United States Southern District of California, Central Division

Civil Action No. 6747-Y

[File endorsement omitted.]
[Title omitted.]

Joinder of Defendant, General Motors Corporation, in amended and Supplemental Motion to Dismiss of National City Lines, Inc.

Filed Sept. 2, 1947

Defendant, General Motors Corporation, joins in the motion of National City Lines, Inc., American City Lines, Inc., Pacific City Lines, Inc., Firestone Tire and Rubber Company, and Mack Manufacturing Corporation, to dismiss the above-entitled action on the ground that this is not a convenient forum to try said action, and that the most convenient forum therefor is the United States District Court for the Northern District of Illinois, Eastern Division (Chicago).

Dated September 2nd, 1947.

HENRY M. HOGAN and
COSGROVE, CLAYTON, CRAMER & DIETHER,
T. B. COSGROVE,
LEONARD A. DIETHER,
By T. B. COSGROVE,
Attorneys for the Defendant, General Motors Corporation.

160 In the District Court of the United States for the Southern District of California, Central Division

[File endorsement omitted.]

[Title omitted.]

Joinder of Defendants, Standard Oil Company of California and Federal Engineering Corporation, in motion No. 1 filed by Defendants, National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc., as said motion No. 1 has now been amended and supplemented.

Filed Sept. 2, 1947

Defendants, Standard Oil Company of California and Federal Engineering Corporation, joint in Motion No. 1 (motion to dismiss) filed herein by defendants, National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc., as said
161 Motion No. 1 has now been amended and supplemented.

Dated August 30, 1947.

LAWLER, FELIX & HALL,
FELIX T. SMITH,
John M. Hall,
By John M. Hall,
JOHN M. HALL,
Attorneys for defendants,
Standard Oil Company of California
and Federal Engineering Corporation.

Received copy of the within Joinder this 2d day of Sept. 1947.

W. C. DIXON,
H. S.
Attorney for U. S.

162 In the District Court of the United States for the Southern District of California, Central Division

Civil Action No. 6747-Y

[File endorsement omitted.]
[Title omitted.]

Affidavit of Jesse R. O'Malley in opposition to defendants' motion to dismiss

Filed Sept. 3, 1947

County of Los Angeles,
State of California, ss:

Jesse R. O'Malley, being duly sworn, deposes and says:

That he is one of the counsel for the Government in the case of United States v. National City Lines, Inc. et al., Civil No. 6747-Y, in the Southern District of California, Central Division; that he was connected with and participated in the investigation resulting in the filing of said suit and is engaged in the preparation of said case for trial and is personally familiar with the facts contained in the averments and allegations herein made.

163 Affiant avers that a substantial number of the agreements which the Government contemplates using in the trial of said case were negotiated in the State of California; that the evidence which the Government expects to introduce to prove the allegations of the Complaint covers and relates to the activities of the defendants Standard Oil Company of California, Federal Engineering Corporation, General Motors Corporation, Firestone Tire and Rubber Company, Pacific City Lines, Inc., and subsidiaries thereof, in the West Coast area including the State of California in particular; that this evidence will cover a period of approximately nine years and that such evidence will also cover the activities of the defendant National City Lines, Inc. within the West Coast area including, among other activities, its actions within the past three years which relate to the manner and method whereby it secured control of defendant Pacific City Lines, Inc., the Los Angeles Transit Lines, the Long Beach City Lines, and the Key System which operates in the Oakland and San Francisco Bay area in the State of California, as well as the relations between such companies and the supplier defendants named in the Complaint, exclusive of the defendant Phillips Petroleum Company.

Affiant further avers that in proving the conspiracy charged in the Complaint the Government expects to call a substantial

number of witnesses from the Pacific Coast area and states adjacent thereto, which testimony the Government expects will prove the existence and the effects of the conspiracy charged in the Complaint, as well as the connection of the various defendants therewith.

Affiant further avers that a large amount of documentary evidence will be subpenaed by the Government from companies doing business in the Pacific Coast area, which evidence will form a substantial part of the proof which the Government expects to offer in support of the existence of the conspiracy itself as well as other allegations in the Complaint.

Affiant further avers that the Government expects to
164 subpena numerous documents, books, and records on the trial of this case from operating subsidiaries of defendant National City Lines, Inc. located on the Pacific Coast and from the defendants Pacific City Lines, Inc. and subsidiaries thereof, Standard Oil Company of California, and Federal Engineering Corporation, which defendants have their principal offices within the State of California and carry on extensive business operations which relate to the restraints charged in the Complaint, all of which are within the jurisdiction of this Court.

Affiant further avers that all the supplier defendants except defendant Mack Manufacturing Corporation and defendant Phillips Petroleum Company are found and transact business on a large scale in the Southern District of California; that defendant Mack Manufacturing Corporation does business in Los Angeles, California, through a wholly owned subsidiary, Mack International Motor Truck Corporation; that W. Ralph Fitzgerald, Vice President and Operating Manager of National City Lines, Inc., lives in the City of Los Angeles and has offices here from which he supervises the operations of defendant National City Lines, Inc. on the Pacific Coast; that said W. Ralph Fitzgerald is one of the two officers of defendant National City Lines, Inc., in charge of the purchases of busses, tires, tubes, and petroleum products for the operating subsidiaries of defendant National City Lines, Inc., the purchase of which products is the subject of the restraints alleged in the Complaint; that the other officer in charge of the purchases allegedly restrained is E. Roy Fitzgerald of Chicago, Illinois, who is Chairman of the Board of Directors of Los Angeles Transit Lines; that Foster G. Beamsley, Vice President of defendant National City Lines, Inc., is also a director of the Los Angeles Transit Lines; that the Government contemplates introducing important and substantial evidence in the trial of the instant case in support of the principal allegations and charges made against the defendants in the Complaint, which evidence will relate to both

the manner and method whereby control was acquired of
165 Los Angeles Transit Lines by defendant American City Lines, Inc., and the manner and the method whereby the trade restraints described in the Complaint were thereafter imposed on said Los Angeles Transit Lines by the defendants; that defendant Pacific City Lines, Inc., is a wholly owned subsidiary of defendant National City Lines, Inc., and also carries on extensive business operations in the Southern District of California; that said defendants Standard Oil Company of California, General Motors Corporation, and the Firestone Tire and Rubber Company, all have large plants and business offices in the Southern District of California; that the only corporate defendant doing no business whatever in any manner in the Southern District of California is the Phillips Petroleum Company, whose headquarters are in Bartlesville, Oklahoma.

Affiant further avers that the Government contemplates subpenaing documentary evidence from the defendant National City Lines, Inc., on the trial of this case but that affiant is informed and therefore avers that the the filing system of said defendant National City Lines, Inc., is decentralized and that much of the documentary evidence to be produced by such defendant on the trial of such case, pursuant to subpena, will be found and obtained from files of some of the subsidiaries of defendant National City Lines, Inc., many of which are doing business within the jurisdiction of this Court as before averred; that C. Frank Reavis of New York City, Counsel and Director of National City Lines, Inc., is reported to have made the following statement under oath before the Public Service Commission of Maryland on September 14, 1944, with reference to the twenty-eight operating companies which were then under the control of National City Lines, Inc., in which he indicated that many subsidiaries of National City Lines, Inc., were locally operated: "I do not mean to say National City operates them. Each subsidiary in its own city is responsible for its own operations."

Affiant further avers that information submitted by defendant National City Lines, Inc., disclosed that two groups of subsidiary
corporations are controlled by said defendant, i. e., those
166 primarily directed from Chicago and those directed primarily by local management. Said information submitted by said defendant referred to the consolidated total assets of "Chicago operated companies" as totalling $29,499,201.45. Affiant has reason to believe and therefore avers that the assets of the Key System operated companies" as totalling $29,499,201.45. Affiant has rea-

of Oakland and the San Francisco Bay area as of September 30, 1946, totalled $19,288,616.54; that the price paid for the securities of the Los Angeles Transit Lines by defendant National City Lines, Inc., or its controlled subsidiary American City Lines, Inc., was $12,880,000; and that the total assets of the Key System and the Los Angeles Transit Lines, which operate in the Pacific Coast area and whose motorbus, tire, tube, and petroleum products business is subject to the restraints charged in the Indictment, is in excess of the total assets of all of the so-called "Chicago operated companies," and that evidence of the imposition of such restraints on said companies is part of the evidence which the Government expects to offer on the trial of the case to prove the conspiracy allegations of the Complaint.

Affiant further avers that the sale of busses, tires, tubes, and petroleum products, which is the subject of the trade restraints charged in the Complaint and concerning which the Government expects to introduce evidence on the trial of the within case, is far greater on the Pacific Coast than in any other area of the country in which the defendants conduct their operations. Affiant further avers that the defendant National City Lines, Inc., has also produced figures which indicated that during the first eight months of 1946 motorbusses purchased by the so-called "Chicago operated companies," and which were subject to the restraints alleged in the Complaint, totalled only $769,681, whereas during the same eight months' period the Los Angeles Transit Lines produced figures which indicated that dur-
167 ing the same period its purchases of motorbusses totalled $2,232,975.58, all of which evidence the Government expects to produce, together with other evidence, on the trial of the instant case in support of the allegations and charges made against all defendants named in the Complaint.

Dated Sept. 3, 1947.

Jesse R. O'Malley,
JESSE R. O'MALLEY,
Special Attorney,
United States Department of Justice.

Subscribed and sworn to before me this 3 day of September 1947

[SEAL]

CLARKE EDWIN STEPHENS,
Notary Public in and for the County of Los Angeles, State of California.

168 In the District Court of the United States in and for the Southern District of California, Central Division

No. Civil 6747–Y

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., ET AL., DEFENDANT

AFFIDAVIT OF SERVICE BY MAIL

UNITED STATES OF AMERICA,
Southern District of California, ss:

Helen Sheridan, being first duly sworn, deposes and says:

That (s)he is a citizen of the United States and a resident of Los Angeles County, California; that (her) business address is 1602 Post Office and Court House, Los Angeles, California; that (s)he is over the age of eighteen years, and is not a party to the above-entitled action;

That on September 3, 1947, (s)he deposited in the United States Mails in the Post Office at 312 No. Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Brief and Affidavit in Opposition to the Defendants' Motions for a Bill of Particulars and to Dismiss the above entitled cause, addressed to Jackson W. Chance, O'Melveny & Myers; Oscar Trippet, Haight, Trippet & Syvertson; T. B. Cosgrove, Cosgrove, Clayton, Cramer & Diether; Herbert T. Morrow, Bennett, Finlayson & Morrow; Charles E. Millikan, Wright & Millikan; John M. Hall, Lawler, Felix & Hall, at their last known address, at which place there is a delivery service by United States Mails from said post office.

HELEN SHERIDAN.

Subscribed and sworn to before me, this day of Sept. 8, 1947.

EDMUND L. SMITH,
Clerk, U. S. District Court,
Southern District of California.
By EDW. L. DREW,
Deputy.

In the District Court of the United States for the Southern District of California, Central Division

Civil Action No. 6747-Y

[File endorsement omitted.]
[Title omitted.]

Affidavit of H. H. Hollinger in support of motion to dismiss on ground of forum non conveniens, on behalf of the Firestone Tire & Rubber Company

Filed Sept. 11, 1947

County of Summit,
State of Ohio, ss.

H. H. Hollinger, being first duly sworn on oath, deposes and says:

1. That he is Secretary of The Firestone Tire & Rubber Company, an Ohio corporation, one of the corporate defendants in the above-captioned case; that on behalf of said Company he files this affidavit in support of a motion to dismiss on the ground of forum non conveniens.

2. That by the terms of the Complaint and otherwise it is evident that the alleged offenses occurred principally in Chicago.

3. That the principal defendant National City Lines, Inc. has its principal place of business in Chicago and that the operations of the National system are directed from Chicago which is 2,000 miles removed from Los Angeles. Defendant General Motors and defendant Firestone have their principal place of business in Detroit, Michigan and Akron, Ohio respectively which said cities are approximately 2,500 miles from Los Angeles. Defend-
170 ant Mack has its principal place of business in New York which is approximately 3,000 miles from Los Angeles. Defendant Phillips has its principal place of business in Bartlesville, Oklahoma, about 1,500 miles from Los Angeles. Defendants Standard and Federal have their principal place of business at San Francisco which is 400 miles removed from Los Angeles.

4. That none of the corporate defendants reside in or have their principal places of business or general offices in the Southern District of California, Central Division.

5. That he is advised that the trial of this case may last a number of months; the attendance of L. R. Jackson, Executive Vice Presi-

dent of The Firestone Tire & Rubber Company, at a lengthy trial in Los Angeles would seriously interfere with the normal conduct of defendant Firestone's business and would cause great personnel inconvenience. If the trial is held in Chicago which can be reached by airplane from Akron within two hours, it would permit him to commute between these two cities and thus discharge his duties as Executive Vice President of the Company. Any witnesses employed by defendant Firestone who might be called on behalf of the government or the Company are located at Akron or at least in the midwestern states and if the trial is held in Chicago, it would be less injurious to the business operations of defendant Firestone than to require said witnesses to travel to Los Angeles.

6. That a companion criminal case involving the same parties and the same issues has heretofore been filed in this court as Criminal Action No. 19270 and by order of court entered August 14, 1947, said criminal action has been transferred to the Federal District Court at Chicago, Illinois. That to try the criminal case in Chicago and the civil case in Los Angeles would
171 cause great business hardship and inconvenience.

H. H. Hollinger,
H. H. Hollinger,
Secretary, The Firestone Tire & Rubber Company, Akron, Ohio.

Subscribed and sworn to before me this 4th day of September 1947.

[seal] Mabel Joynt,
Mabel Joynt, *Notary Public.*

My Commission Expires June 5, 1950.

172 In the District Court of the United States for the Southern District of California, Central Division

[Title omitted.]

Affidavit of Joseph Thomas in Support of Motion to Dismiss on Ground of Forum non Conveniens, on Behalf of the Firestone Tire & Rubber Company

County of Summit,
State of Ohio, ss:

Joseph Thomas, being duly sworn, deposes and says:

1. That defendant herein, The Firestone Tire & Rubber Company have joined in a motion to dismiss on the ground of forum non conveniens.

2. That as General Counsel for defendant The Firestone Tire & Rubber Company and on behalf of said Company, he files this affidavit in support of said motion.

3. That on August 14, 1947, this Court entered an Order transferring to the Federal District Court at Chicago, for trial, a companion criminal case under Rule 21 (b) of the Federal Rules of Criminal Procedure; said case involved the same defendants and, substantially the same allegations and issues, and is known as United States of America, plaintiff vs. National City Lines, Inc. et al. defendants, Criminal Action No. 19270.

4. That in response to a subpena duces tecum served on the Company at Akron, Ohio on September 16, 1946, and at the Company's General Counsel, he supplied from Akron, Ohio,
173 a large number of papers to the Anti-trust Division of the United States Department of Justice at Los Angeles; that said papers involving the relationship between Firestone and the National City Lines, Inc. et al., disclosed the names of sixteen members of the Firestone organization. All but one of these persons are residents of Akron or Chicago. Some of them are officers or executives of the Company, and the rest are important members of the managerial staff. It is entirely possible that the Government, in either Criminal Action No. 19270, or in this Civil Action No. 6747–Y, or both, may subpena all or a substantial number of these important executives of the Company as witnesses at the trial of these cases, and it is a certainty that the Company will use some of these executives as witnesses, and also to assist Counsel at the trial of these cases.

5. That the interests of justice will not be served unless this Civil Action is transferred to Chicago for trial, and this is especially true in view of the fact that the companion Criminal Case, for good cause shown, has already been so transferred as stated above; the expense and hardship to the defendants of educating two sets of local defense counsel, one group in Chicago to prepare to try the Criminal Case and another group in Los Angeles to prepare and try the Civil Case, is apparent.

6. That if the said cases are tried consecutively in the same court, it is probable that facts developed in the first case may be stipulated to a large extent in the second case, which would save a great deal of time and expense to the Government, and to the defendants,

all of which is in the interest of justice; this could not be accomplished if the respective trials are held two thousand miles apart.

Joseph Thomas,
JOSEPH THOMAS,
General Counsel, The Firestone Tire & Rubber Company, Akron, Ohio.

Subscribed and sworn to before me this 4th day of September 1947.

Mabel Joynt,
MABEL JOYNT.
Notary Public.

My Commission Expires June 5, 1950.

Received copy of the within affidavit this 11th day of September 1947.

W. C. DIXON,
H. S.
Attorney for U. S.

174 In the District Court of the United States, Southern District of California, Central Division

[File endorsement omitted.]
[Title omitted.]

Affidavit of C. Frank Reavis in support of motion to dismiss

Filed Sep. 11, 1947

STATE OF NEW YORK,
County of New York, ss:

C. Frank Reavis, being duly sworn, deposes and says:

1. I am a member of the law firm of Hodges, Reavis, Pantaleoni & Downey, 20 Pine Street, New York City, N. Y., General Counsel for the defendants National City Lines, Inc. (hereinafter called National), American City Lines, Inc. (hereinafter called American), and Pacific City Lines, Inc. (hereinafter called Pacific). I am also a member of the Board of Directors and a member of the Executive Committee of the Board of Directors of the defendant National. I submit this affidavit in support of the motion for an order dismissing the complaint on the ground that, in the interest of justice, this action should be tried in the United States District Court for the Northern District of Illinois, Eastern Division (Chicago).

2. As appears from the affidavit of E. Roy Fitzgerald, sworn to June 16, 1947, also submitted in support of this motion, National is the central or principal defendant in this action. That

corporation has no office in California and has never transacted business and cannot be found in that State. It was
175 organized in Delaware and has always had its principal office in Chicago, Illinois. The same was true with respect to the defendant American prior to its merger into National, on July 15, 1946, and is true, of course, with respect to the presently existing American City Lines, Inc., which was formed in Delaware on the same date and which has never transacted any business anywhere. The defendant Pacific is a wholly owned subsidiary of National. It was also organized in Delaware and it has never transacted business and cannot be found in the Southern District of California.

3. It is apparent from a reading of the complaint in this action and the Indictment in Criminal Action No. 19270 returned by the Grand Jury in this District, that both actions were commenced simultaneously, that the corporate defendants in both are the same, and that the alleged conspiracies complained of in both are identical and are based upon the very same activities, concert of action and course of conduct which the Government contends were illegal and in restraint of trade in violation of the Sherman Act (15 U. S. C. A. §§ 1, 2). The only difference between the two actions is the relief sought. In the criminal action the Government is seeking to have criminal penalties imposed upon the corporate defendants and certain of their officers for such alleged violations, and in the civil action the Government is seeking injunctive relief restraining the corporate defendants from continuing the same alleged violations and from continuing to reap the benefits of the same alleged illegal activities.

176 4. This Court has already found that it would impose unnecessary hardships on the defendants and entail unjustifiable expenses if the criminal action were to be tried in this jurisdiction. Consequently, by order dated August 14, 1947, this Court ordered that, in the interests of justice, the criminal action be transferred to the United States District Court for the Northern District of Illinois, Eastern Division, for trial. The very same reasons which impelled the Court to make such a finding in the criminal action applies with like effect to the civil action. A trial of the civil action in this jurisdiction would impose the very same unnecessary hardships on the defendants and would entail the very same unjustifiable expenses. These could be eliminated if, like the criminal action, the civil action was also to be tried in Chicago.

5. Moreover, if the civil action has to be tried in this jurisdiction and the criminal action in Chicago, it is clear that not only would these unnecessary hardships and unjustifiable expenses continue to vex and oppress the defendants to their prejudice, but

they would be considerably aggravated by the fact that the two actions would have to be defended in two widely separated forums. Each corporate defendant would have to retain local counsel to represent and defendant it in Los Angeles and other local counsel to represent and defendant it in Chicago. Deponent's firm, being located in New York City, could not represent National, American, or Pacific in connection with either the Los Angeles action or the Chicago indictment. Therefore these companies would have to bear the expense and harassment of the employment of two sets of lawyers situated in two cities far distant from each other.

177 6. Both Los Angeles and Chicago counsel would have to be furnished with copies of all the numerous papers, records, and documents which relate to and have a material bearing on the matters complained of in both actions. Considerable time would have to be spent by both counsel in studying and fully understanding these documents. Both Los Angeles counsel and Chicago counsel would have to be made thoroughly familiar with all the details and ramifications of the businesses of the various defendants and of the business dealings and relations which the various defendants had with each other from 1937 to date. Both Los Angeles counsel and Chicago counsel would have to confer from time to time over a period of weeks and perhaps months, with the numerous executives and key employees of the defendants whose testimony may be material and relevant at the trials of both actions. In other words, every step taken by the defendants and their executive officers and employees with their counsel in Los Angeles, in preparing for trial in Los Angeles, would have to be duplicated with their counsel in Chicago, in preparing for trial in Chicago.

7. This duplication of effort would be financially costly to the defendants. Counsel fees would have to be paid to two sets of local counsel for work which could properly be performed by one, at one fee. In addition, twice the amount of time would have to be spent in preparing the two actions for trial than would be necessary if both actions were to be tried in one jurisdiction. As far as the many officers and employees of the defendants familiar with the transactions complained of are concerned, this time would have to be taken from the regular normal corporate activities of the defendants.

178 8. This unnecessary expenditure of time, money, and effort would be oppressive and highly prejudicial to the corporate defendants, would not be in the interests of justice, and could be avoided by having both actions tried in one forum. That the proper forum is the United States District Court for the Northern District of Illinois, Eastern Division (Chicago) is clear

from the opinion rendered by this Court in ordering the criminal action transferred to that district for trial.

C. FRANK REAVIS.

Sworn to before me this 3d day of September 1947.

[SEAL] HELEN WORTH,
Notary Public, State of New York,
Residing in New York County.

N. Y. Co. Clk's No. 290 Reg. No. 452-W-8; Kings Co. Clk's No. 183 Reg. No. 298-W-8.

Commission Expires March 30, 1948.

Service of a copy of the within affidavit is hereby acknowledged this — day of September 1947.

WILLIAM C. DIXON,
JESSE R. O'MALLEY,
LEONARD M. BESSMAN,
By LEONARD M. BESSMAN,
Attorneys for Plaintiff.

179 In the District Court of the United States Southern District of California, Central Division

Civil Action No. 6747-Y

[File endorsement omitted.]
[Title omitted.]

Reply affidavit of C. Frank Reavis

Filed Sept. 15, 1947

STATE OF CALIFORNIA,
County of Los Angeles, ss:

C. Frank Reavis, being duly sworn, deposes and says:

1. I am a member of the firm of Hodges, Reavis, Pantaleoni & Downey, 20 Pine Street, New York 5, New York, general counsel for the defendants National City Lines, Inc. (hereinafter called National), American City Lines, Inc. (hereinafter called American), and Pacific City Lines, Inc. (hereinafter called Pacific). I am also a member of the Board of Directors and a member of the Executive Committee of the Board of Directors of the defendant National. I submit this affidavit in reply to the affidavit of Jesse R. O'Malley (hereinafter called the Government's affidavit),
180 submitted in opposition to the motion for an order dismiss- the complaint herein on the ground of forum non conveniens.

2. The Government's affidavit is identical with the affidavit it filed in the criminal action against the same defendants, with the exception of one or two immaterial and irrelevant changes.

3. For a detailed answer to the Government's affidavit I respectfully refer to the affidavit of E. Roy Fitzgerald, sworn to on August 6, 1947, which was submitted in answer to the Government's affidavit in the criminal action. A copy of Mr. Fitzgerald's affidavit is attached hereto as Exhibit A.

4. This Court, in commenting upon the Government's affidavit in the criminal action, stated as follows:

"The facts, in the main, are undisputed. In truth, the Government, at first, did not deny the affidavit filed on behalf of National. Realizing, at the oral argument, that they may have treated the matter lightly, the Government sought and obtained leave to file a counteraffidavit. This counteraffidavit does not, on the whole, deny the facts relating to National and to the other nonresident defendants. In substance, it asserts that many of the Government witnesses are local and that, in the presentation of its case before the Grand Jury, it used many documents which were supplied locally. Granted that this is so, how can it be assumed, in the face of sworn statements to the contrary, that documentary and other proof to be presented by the defendants is available locally?"

181 5. As distinguished from the statements in its affidavit, the Government in its brief states two conclusions which I believe are at variance with the facts, and to which attention should be drawn:

A. At page 9 the Government states:

"The case at bar goes beyond the requirements laid down in the Standard Oil case and, as shown in the Government's affidavit, all but one of the defendants in the instant case are found or transact business in the Southern District of California on a substantial basis."

The only facts stated by the Government to sustain the above conclusion is the statement that National owns control of the Los Angeles Transit Lines and of the Long Beach City Lines.

The Government in its affidavit does not set forth any facts respecting Pacific City Lines to justify its conclusion that this company is doing business within this district.

I respectfully state to the Court that neither National, American, or Pacific transact business within the Southern District of California nor are any of them found in that district.

Mack Manufacturing Corporation submitted an affidavit to the effect that it does no business in this district and is not found here, although it owns securities of a company which does do business here. The Government itself states that Phillips Petroleum Company was not doing business in this district when this suit was commenced and that it is not found in this district. I am

also advised that Federal Engineering Company does no business in this district and is not found here.

182 Hence six of the nine defendant companies were neither found in nor doing business in this district when this action was commenced. It is to be observed that the complaint alleges that only two defendant companies—General Motors Corporation and Standard Oil of California—were doing business in this district. Service of summons on National, American, and Pacific was made outside this district, the Government apparently relying upon the provisions of Section 5 of the Sherman Act (15 U. S. C. A. Sec. 5) for authority to do so. This, in itself, is a recognition of the fact that National, American, and Pacific do no business and cannot be found in this district.

B. At page 20 the Government states in its affidavit that:

"* * * the case at bar wherever it will be tried * * * will require supervision by an equity court of nine primary corporate defendants organized under the laws of Delaware and Ohio and domiciled in Illinois, California, Michigan and Ohio."

The fact of the matter is that while there would be required detailed future supervision of corporate operations if the Court finds for the Government in this action, this would be confined almost entirely to supervision of National, a Delaware company operating from Chicago. As this Court found (page 13 of the opinion in the criminal case):

"the head and front of the offending is National City Lines, Inc., and its subsidiaries, American City Lines, Inc., and Pacific City Lines, Inc., and especially National which owns and controls the two others. National has its main place of business in Chicago, Illinois. All of its records are located there."

183 The prayer for relief in this action (other than a prayer to require a divesting of the stock of National, American, and Pacific owned by the suppliers and a declaration that the investment contracts between the suppliers and National, American, and Pacific are void) is for an injunction and an order against National, American, and Pacific. This injunction would control the purchase by them of equipment, motorbusses, tires, tubes, and petroleum products and the acquisition of any further interests in operating companies and this order would require a disposition of the interest of these companies in local transportation companies.

Thus it is clear that while, as said, a detailed and continued supervision of National will be necessary under any decree, no supervision would be necessary of the other corporate defendants.

Such a supervision could be conducted with efficiency only from Chicago.

C. FRANK REAVIS.

Subscribed and sworn to before me this 15th day of September 1947.

[SEAL] AGNES E. SHULTZ,
Notary Public in and for the County of Los Angeles, State of California.

184 *Exhibit "A" to reply affidavit of C. Frank Reavis*

In the District Court of the United States for the Southern District of California, Central Division

Criminal Action No. 19270

UNITED STATES OF AMERICA,

vs.

NATIONAL CITY LINES, INC., ET AL., DEFENDANTS

Reply affidavit of E. Roy Fitzgerald in support of motion to transfer proceeding to District Court of the United States for the Northern District of Illinois, Eastern Division.

STATE OF ILLINOIS,
County of Cook, ss:

E. Roy Fitzgerald, being duly sworn, deposes and says:

1. I am one of the defendants named in the indictment. I am a Director and President of National City Lines, Inc., a defendant (hereinafter called National). This affidavit is in reply to the affidavit of Jesse R. O'Malley, one of the counsel for the Government, in opposition to the motion by all the defendants for an order, pursuant to Rule 21 (b) of the Federal Rules of Criminal Procedure, that in the interest of justice this proceeding be transferred from this district (where no one of the defendants
185 has his or its principal place of business or resides) to the District Court of the United States for the Northern District of Illinois, Eastern Division (Chicago).

2. I respectfully represent that the opposing affidavit deals with matters concerning certain local operating companies which are irrelevant or inconsequential with respect to the ultimate grounds of the motion—the hardship to the defendants, especially National, of a trial in this district and the importance, if there is to be a full and fair inquiry, of a trial in Chicago.

3. In order to appraise the significance of the matters raised in the opposing affidavit it is necessary again to consider the nature

of the restraints charged. The indictment alleges a concert of action extending over ten years commencing 1937 to acquire a substantial financial interest in companies which provide local transportation service and to eliminate and exclude all competition in the sale of motorbuses, petroleum products, tires and tubes to such companies (Indictment par. 21). National is the central defendant and the indictment concerns and attacks its relationship with the supplier defendants. The transportation system in Los Angeles is only one of the more than forty operations in which National is interested and this interest was acquired only in 1945, more than eight years after the alleged commencement of the concert of action in 1937. The basic transactions and relationships upon which the proceeding seems to be based are:

(a) National in 1939 and American City Lines, Inc.
186 (organized in 1943) in 1943 and 1944 made certain agreements with the suppliers under which they provided money to National or American against their securities (Indictment pars. 22 and 23). Such agreements were negotiated by the chief executive officers of the various corporations and were principally agreed upon in Chicago. These agreements were executed in Chicago by National or American and were severally executed by the suppliers at their offices in Akron, Ohio (Firestone), Pontiac, Michigan (General Motors), New York City (Mack), Bartlesville, Oklahoma (Phillips), and San Francisco (Standard). The stock of National or American so purchased was paid for and delivered in Chicago. When American was merged into National in 1946, a merger whose terms were negotiated in Chicago, the stock of American previously purchased by certain of the suppliers was exchanged for stock of National.

(b) National in 1939 and American in 1943 and 1944 made certain agreements with the suppliers to purchase certain supplies (Indictment pars. 22 and 23). Such agreements were executed by the chief executive officers of the various companies in Chicago and were principally agreed upon in Chicago. After each contract was approved it was executed by National or American in Chicago and then severally executed by the suppliers at their offices in Akron, Ohio (Firestone), Pontiac, Michigan (General Motors), New York City (Mack), Bartlesville, Oklahoma (Phillips), and San Francisco (Standard).

(c) National has always been managed from Chicago.
187 All investigations respecting transit properties in the United States and the purchase of interests in transit properties were directed from Chicago by National and American. All important policies and decisions in connection with the purchase of interests in operating companies were made by National or American in Chicago.

4. Thus, it is the contracts and relationships between National and the suppliers that are challenged. It is a broad and national concert of action that is charged. It is at once apparent that the vital matters at any inquiry will not concern the local matters affecting the individual operating companies, but will concern the basic and "over-all" management and financial policies of National and National's relationship with its suppliers. The essential matters will be the organization of National in Chicago in 1936; its growth and operation; its relationships and contracts with the supplier defendants and other suppliers, all of which took place in or stemmed from Chicago; the financing of National in and from Chicago; and the purchase of and directions and supervision of operating companies, all of which took place in and from Chicago. All of these matters involve decisions and determinations made, on the highest management level, by executive officers of National and the supplier defendants in and about Chicago and the home offices of the suppliers. The essential testimony as to all these fundamental policies, decisions, and transactions must come from the executive officers of National and the supplier defendants, all of whom reside and have their place of business far from this district. The relevant documentary
188 proof must come from the records maintained at the home offices of all these companies, all of which are far removed from this district. The opposing affidavit does not and cannot question this.

5. The opposing affidavit deals with "local" or inconsequential matters which will not be a vital part of this inquiry. It does not even attempt to confine such "local matters" to this district, but speaks generally of the "Pacific coast area"—a wide area of which this district is only a part. While no purpose would be served by commenting in detail on all such "local matters," it may be appropriate to refer to some of the matters set forth in the opposing affidavit.

(a) The opposing affidavit attempts to outline the testimony which will be offered respecting National (p. 2). Reference is there made to the alleged activities in the "West Coast area" of a number of companies and it states that the evidence will cover the activities of National "within the past three years relating to the manner and method whereby it secured control of Pacific City Lines, Inc., the Los Angeles Transit Lines, the Long Beach City Lines, and the Key System which operates in Oakland and the San Francisco Bay area in the State of California, as well as the relations between such companies and the supplied defendants * * *." The above allegations are substantially the only ones in the opposing affidavit regarding the activities of National

upon which it is sought to justify a trial in the Southern District of California. Stripped of its general language this merely means that National acquired control of these companies. This was done by purchase, except in the case of Pacific City
189 Lines, Inc., in which there was an exchange of stock, arranged and carried out in Chicago. The gist of the Indictment is not the making of such purchases—but the alleged broad concert of action between National and the suppliers. Purchasers of interests in transportation properties were made by National in over forty communities and it certainly could not be argued that this case could fairly be tried in any one of them.

(b) The opposing affidavit (pp. 2, 3) contains general averments that a large amount of documentary evidence will be subpenaed by the Government from companies doing business in the "Pacific coast area" and that more than three hundred documents were subpenaed from Pacific City Lines, Inc., during the Grand Jury investigation. Again—the Government could subpena every book and record of any company, including Pacific City Lines, Inc., without affecting the ultimate fact that the alleged offense lies elsewhere and the substantial proof lies elsewhere—in Chicago. It is understandable that the Government obtained much material regarding local matters from many documents, extending from the East to the West coast.

(c) The opposing affidavit states (p. 3) that all the supplier defendants, except Phillips, do business in this district. However, the question is not one of venue and there is no significance in the fact that the supplier defendants may be here engaged in local sales activities.

(d) The opposing affidavit refers (p. 4) to the fact that defendant Beamsley and I are directors of Los Angeles Transit Lines. It has been only natural for officers of National to
190 serve as directors of companies in which National is interested. Thus, defendant Beamsley and I are members of the Board of Directors of St. Louis Public Service Company and I am a member of the Board of Baltimore Transit Lines. The opposing affidavit again refers (p. 4) to the "manner and method" of the acquisition of control of the Los Angeles Transit Company. But, again, this is not relevant to the main issue in the case.

(e) The opposing affidavit alleges (pp. 4, 5) that since National is a decentralized company "evidence to be produced by such defendant on trial" will be obtained from the files of its subsidiaries. This is in error. National is, of course, decentralized in that local operations of its wholly owned subsidiaries are carried on locally, and the operations of the companies in which it has investments are all carried on locally. These operations, how-

ever, have nothing to do with the alleged concert of action between National and the suppliers. All files (as to National) with respect to the broad concert of action alleged are located in the main office of National in Chicago and (as to the suppliers) are, to my information and belief, located at the main offices of the respective suppliers.

The opposing affidavit quotes a statement by C. Frank Reavis, counsel and a director of National, in a hearing before the Public Service Commission of Maryland, that "each subsidiary in its own city is responsible for its own operations." This statement was made in 1944 with respect to the operating companies, mostly in the Midwest, which were 100% owned by National, and referred to the local affairs of these companies, such as labor relations, maintenance of 100% equipment, and other like matters of
191 daily operation. As stated in my main affidavit with respect to such subsidiaries (p. 5), the books of account have been kept in Chicago, their purchases of supplies have been arranged in Chicago, and their operations supervised in Chicago. However, it is not such operation by the local units that is attacked in this proceeding, but the basic policies and decisions of National involved in its relationships with the suppliers, all of which have necessarily been made from or in Chicago. The relationship of National with the suppliers with respect to all companies in which National has been interested has always been carried on in Chicago.

(f) The opposing affidavit refers (p. 5) to the total assets of the Key System and the price paid for the securities of Los Angeles Transit Lines. This is irrelevant, as it would be irrelevant to mention that the total assets of the Baltimore Transit Company and St. Louis Public Service Company, in which National has investments, were, as of December 31, 1946, $56,731,650.48 and $44,721,927, which is substantially in excess of the total assets appearing on the balance sheet of either the Los Angeles Transit Lines or the Key System. While reference is made to the total dollar amount of supplies sold to the operating companies in the Pacific Coast area—not this district (p. 5), this fiscal information has no significance since the essential matters are the dealings and purchase policies between National and the suppliers, policies negotiated and determined in places far distant from this district.

(g) Reference is made to Pacific City Lines, Inc. (all of whose operations are outside of this district). As set forth in my
192 main affidavit (p. 6), the supply contracts between Pacific and certain of the suppliers were prepared and executed by the suppliers at their main offices, Akron, Detroit, Pontiac, and San Francisco, and were executed by Pacific in Oakland, Cali-

fornia. The general policies of Pacific are directed in Chicago and dealings and negotiations between Pacific and the suppliers are carried on principally in Chicago or at the main offices of the particular suppliers.

(h) The mere circumstance that there might be some witnesses or some documents in this district cannot defeat the overwhelming justice in the application of defendants for a removal of this proceeding.

6. A transfer of the proceeding to Chicago is more than a matter of "convenience" to the defendants but is essential to avoid unnecessary hardship and to insure, by the availability of all important proof, a full and fair trial and is in the interests of justice. No facts are set forth in the opposing affidavit to weaken or question the factual showing of such hardship in the moving affidavits. Again, to summarize briefly, the compelling grounds for such transfer:

(a) Most of the many witnesses, including executive officers and key employees, who will be required to testify, reside in or about Chicago, or in Akron, Ohio, or in Detroit, Michigan, or in Bartlesville, Oklahoma, or in New York City, for all of whom Los Angeles would be remote and Chicago a vastly more centrally located place.

(b) All of the executive officers and key employees of National, substantially all of whom reside in or about Chicago, will be required to attend the trial and their absence from Chicago
193 would seriously interfere with the proper management of National and the many companies in which it is interested and will impose a great hardship upon National and its stockholders. As for National, this will include affiant and Mr. Beamsley, both of whom must necessarily attend through the trial; Ed Fitzgerald, Vice President and Treasurer; E. V. Anderson, Vice President and Comptroller; J. M. Schramm, Secretary and Assistant Treasurer, and G. L. Walker, Assistant Secretary, all of which officers of National have their offices and reside in or about Chicago.

(c) The main body of the large volume of documentary evidence is located in Chicago or in the home offices of the defendant suppliers, all of which are far distant from Los Angeles.

(d) A great burden of expense will be imposed upon the defendants, especially National, if the trial is held in Los Angeles, rather than Chicago.

7. I respectfully urge that it would be difficult to find a more appropriate case for the application of Rule 21 (b) bearing in mind the essential purpose of the Rule as it appears from the language of the Rule and the many advisory notes and comments

of its draftsmen. I pray the Court for an order transferring the proceeding to the District Court in Chicago.

E. ROY FITZGERALD.

Sworn to before me this 6th day of August 1947.

[NOTARIAL SEAL] MARY E. JOYCE,
Notary Public in and for the County and State aforesaid.

Received copy of the within affidavit this 15th day of September 1947.

W. C. DIXON,
H. S.
Attorney for U. S.

194 *Letter*

September 18th, 1947.

[File endorsement omitted.]

Re: U. S. v. National City Lines, Inc., et al., Civil No. 6747-Y

Honorable LEON R. YANKWICH,
Judge, United States District Court,
Court Room No. 5, Federal Building,
Los Angeles 12, California.

DEAR JUDGE YANKWICH: Some question has arisen among counsel for defendants as to whether or not the record in the above case is clear that all the defendants believe the Northern District of Illinois, Eastern Division, is the proper forum for the above action. In order to avoid any misunderstanding, the defendants are willing to and do hereby agree that if the above-entitled action is dismissed on the motions of the defendants now under submission and a new suit based on the same charges is filed in the District Court for the Northern District of Illinois, Eastern Division, the defendants will not move in said court for a dismissal of said action on the ground that said court is an inconvenient forum or on the ground that the ends of justice do not require that nonresident defendants be summoned and served pursuant to Section 5 of the Sherman Act.

For convenience, counsel for all defendants have joined herein and are willing that this statement be made a part of the record in the above-entitled action.

O'MELVENY & MYERS,
By JACKSON A. CHANCE
Attorneys for Defendants National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc.

COSGROVE, CLAYTON, CRAMER & DIETHER,
By T. B. COSGROVE
Attorneys for Defendant General Motors Corporation.

FINLAYSON, BENNETT & MORROW,
By T. H. MORROW
Attorneys for Defendant Phillips Petroleum Company.

HAIGHT, TRIPPET & SIVERTSON,
By OSCAR A. TRIPPET
Attorneys for Defendant Firestone Tire & Rubber Company.

LAWLER, FELIX & HALL,
By JOHN M. HALL,
Attorneys for Defendants Standard Oil Corporation of California and Federal Engineering Corporation.

WRIGHT & MILLIKAN,
By CHARLES E. MILLIKAN,
Attorneys for Defendant Mack Manufacturing Corporation.

196 In the District Court of the United States Southern District of California, Central Division

Honorable LEON R. YANKWICH, Judge

[File endorsement omitted.]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., AMERICAN CITY LINES, INC., PACIFIC CITY LINES, INC., FIRESTONE TIRE & RUBBER COMPANY, GENERAL MOTORS CORPORATION, PHILLIPS PETROLEUM COMPANY, MACK MANUFACTURING CORPORATION, STANDARD OIL COMPANY OF CALIFORNIA, FEDERAL ENGINEERING CORPORATION, DEFENDANTS

Order on motion

Sept. 29, 1947

The various motions of the defendants, heretofore argued and submitted, are now decided as follows:

(1) Upon the grounds stated in the opinion filed this day, the motions of the defendants to dismiss the Complaint, as amended

and supplemented, are, and each of them is, granted and the said Complaint is hereby ordered dismissed as to each and all the defendants.

(2) The motions of the defendants for a more definite statement or for a bill of particulars are, and each of them is, denied.

Dated this 29th day of September 1947.

197 In the District Court of the United States Southern District of California, Central Division

No. 6747–Y Civil

Honorable LEON R. YANKWICH, Judge

[File endorsement omitted.]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., AMERICAN CITY LINES, INC., PACIFIC CITY LINES, INC., FIRESTONE TIRE & RUBBER COMPANY, GENERAL MOTORS CORPORATION, PHILLIPS PETROLEUM COMPANY, MACK MANUFACTURING CORPORATION, STANDARD OIL COMPANY OF CALIFORNIA, FEDERAL ENGINEERING CORPORATION, DEFENDANTS

Opinion

Sept. 29, 1947

198 APPEARANCES

For the Government: Tom C. Clark, Attorney General of the United States; John F. Sonnett, Assistant Attorney General; William C. Dixon, Special Assistant to the Attorney General; Robert L. Rubin, Special Assistant to the Attorney General; James E. Kilday, Special Assistant to the Attorney General; Jesse R. O'Malley, Special Attorney; Leonard M. Bessman, Special Attorney; James M. Carter, United States Attorney.

For the Defendants: National City Lines, Inc., American City Lines, Ind., by Pacific City Lines, Inc., by Hodges, Reavis, Pantaleoni & Downey, New York; O'Melveny & Myers, Louis W. Myers, Pierce Works, Jackson M. Chance, Los Angeles, California. Firestone Tire & Rubber Co. by Joseph Thomas, Akron, Ohio; Haight, Trippet & Syvertson, Oscar A. Trippet, Frank B. Yoakum, Sr., Los Angeles, California. General Motors Corporation, by Cosgrove, Clayton, Cramer & Diether, T. B. Cosgrove, Leonard A. Diether, Los Angeles, California. Phillips Petroleum Company, by Finlayson, Bennett, & Morrow, H. T. Morrow, Los Angeles, California. Mack Manufacturing Corporation, by Wright &

Millikan, Charles E. Millikan, Los Angeles, California. Standard Oil Company of California, Federal Engineering Corporation, by Lawler, Felix & Hall, John M. Hall, Los Angeles, California.

199 YANKWICH, District Judge:

I

THE NATURE OF THE PROCEEDINGS

On August 14, 1947,[1] in United States v. National City Lines et al., I transferred to the Northern District of Illinois, Eastern Division, a criminal antitrust prosecution instituted against the nine corporate defendants involved in this suit and seven individuals. The ruling was made under the provision for change of venue contained in the Federal Rules of Criminal Procedure.[2]

In the present suit, I am asked to dismiss a Complaint in equity instituted by the Government under Section 4 of the Sherman Anti-Trust Law.[3] The factual background of the two cases is the same.

The States of organization of the defendants are as follows: National City Lines, Inc., Delaware; American City Lines, Inc., Delaware; Pacific City Lines, Inc., Delaware; Standard Oil Company of California, Delaware; Federal Engineering Corporation, California; Phillips Petroleum Company, Delaware; General Motors Corporation, Delaware; Firestone Tire & Rubber Company, Ohio; Mack Manufacturing Corporation, Delaware.

The Government claims that all the defendants except Phillips do business in the district or are to be found in it. However, the affidavits on file show conclusively that only three of the defendants do business or are found in the district—Standard, General Motors, and Firestone. The chief defendants, through whom control is exercised—National and American—have always had their main offices in Chicago, Illinois, where all their records are kept.

In substance, the Government charges that National and its subsidiaries, American, and Pacific, own and control, or have a substantial financial interest in corporations which are referred to as "operating companies," and which are engaged in providing local transportation service in more than forty-two cities in sixteen States.

The operating companies of the defendants National, American, and Pacific use large quantities of busses, tires, tubes, and petroleum products, which are manufactured and handled by the supplier defendants, such as Phillips, Standard, General Motors, Mack, and Firestone. The Government charges that, beginning on or about January 1, 1937, and continuing to the filing of the

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Complaint on April 10, 1947, the defendants have engaged in an unlawful combination and conspiracy to acquire ownership, control or a substantial financial interest in a substantial part of local transit companies in various cities, towns and counties in various States of the United States and

"to restrain and to monopolize the aforesaid interstate commerce in motorbusses, petroleum products, tires, and tubes sold to local transportation companies in cities, counties, and towns in which National, American, and Pacific have, or have acquired, or in the future acquire, ownership, control, or a substantial financial interest in said local transportation companies, all in violation of Sections 1 and 2 of the Sherman Anti-Trust Act. Defendants threaten to and will continue to violate Sections 1 and 2 of the Sherman Anti-Trust Act unless the relief hereinafter prayed for is granted."

The means of achieving this result are stated to be these: "Supplier" defendants have furnished money and capital to National, American, and Pacific who have, in turn, caused their operating companies to purchase practically all their requirements in tires, tubes, petroleum products, and busses from the supplier defendants to the exclusion of products competitive with them. Money made available by the supplier defendants was used to acquire control of local transit companies through the operating companies. National, American, and Pacific would not renew contracts with others for the purchase or rental of materials and equipment without the consent of the supplier defendants. When an operating company was sold, National, American, and Pacific would require the new owner to assume the burden of the contracts for the exclusive purchase of equipment and supplies. No change of type of equipment or conversion to another type would take place without the consent of the supplier defendants. The business of dealing in such supplies and equipment would be allocated to the supplier defendants in an artificial, arbitrary, and uncompetitive manner. Between January 1, 1939, and the date of the filing of the Complaint, the amounts of stock purchased by the supplier defendants in National, American and Pacific were as follows:

Name of Supplier Defendant:	*Amount paid for stock purchased*
Standard Oil Company of Calif., Federal Engineering Corporation	$2,074,310.57
General Motors Corporation	3,190,802.32
Phillips Petroleum Company	1,574,084.82
Firestone Tire & Rubber Company	1,383,403.41
Mack Manufacturing Corporation	1,300,071.43

The effect of the combination and conspiracy, the Complaint avers, is to eliminate competition from other suppliers in the sale of supplies and equipment to National, American, and Pacific and

their operating companies, and to restrain interstate commerce in such equipment substantially and unreasonably, so far as the transportation companies controlled by National, American, and Pacific are concerned, to charge noncompetitive prices for such equipment and to allocate the nation-wide markets of the defendants National, American, and Pacific and their operating companies for supplies and equipment between the various supplier defendants. To end these practices, the Government seeks a decree declaring that the defendants are engaged in a conspiracy in violation of the Sherman Act, that the supplier defendants be required to divest themselves of stock and other interests in the traction companies, that contracts between the parties be declared void, and that the traction and operating companies be enjoined from acquiring their equipment from the suppliers. In addition to this, the following more specific prayers are included which are set forth in full because of their significance in the discussion to follow:

201 "5. That the defendants National, American, and Pacific be ordered to make such disposition of their interests and holdings in local transportation companies as is necessary to restore competition and to dissipate the effects of the unlawful conspiracy; and that defendants National, American, and Pacific be permanently enjoined from acquiring, directly or indirectly, any financial interest in any local transportation system operating in any city, town or county of any State of the United States without first obtaining the approval and authority of this Court:

"6. That the defendants herein and each of them and their officers, directors and representatives and all persons and corporations acting or claiming to act on behalf of them be perpetually enjoined and restrained from combining and conspiring to monopolize or to restrain interstate trade and commerce of the United States in the manner and by the means described herein, and be perpetually enjoined from engaging in or participating in agreements, understandings, practices, or arrangements having a tendency to revive or continue any of the aforesaid violations of the Sherman anti Trust Act."

The defendants have moved to dismiss the Complaint upon the ground of inappropriate forum. Their motions bring into play the doctrine of forum non conveniens.

II

THE DOCTRINE OF FORUM NON CONVENIENS

The doctrine of forum non conveniens is not of statutory origin. In Anglo-American law, it has been used as a means of declining jurisdiction whenever "considerations of convenience,

efficiency and justice" [4] point to another tribunal than that chosen by a litigant as the appropriate tribunal. And courts of equity will "go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." [5]

This doctrine which permits a court having jurisdiction to refuse to exercise it has been applied either under its Latin name, forum non conveniens, or under its truncated English name, inappropriate forum, in many cases arising in Admiralty [6] and in Equity.[7]

The problem before us must be solved in the light of the principles which have governed its application.

In each instance, the Court which declined to exercise jurisdiction had jurisdiction, and the plaintiff had a choice of venue. Thus, when, under a statute, jurisdiction in a proceeding to limit liability could be brought in either the state court or the federal court, the federal court, in its discretion, could enjoin the prosecution of the action in the state court.[8] And when a stockholders' suit relating to the affairs of a corporation could properly be brought in either the state or the federal courts, it was held the federal district court could, in its discretion, dismiss the suit.[9]

The more recent cases of the Supreme Court applying
202 this doctrine must be interpreted in the light of these principles.[10] Indeed, the nub of the controversy between the parties here is as to the meaning of these cases, and especially the Gulf and Koster cases.[11]

It is the Government's contention that these cases lay down a distinction between general venue and special venue statutes and that the doctrine of forum non conveniens does not apply to cases in which the Congress, by a special venue statute, has given to the plaintiff the choice of forums.

None of these cases define the difference between the two types of venue statutes.

It is evident, however, that a general venue statute would be exemplified by the provisions of the Judicial Code to the effect that actions shall generally be brought against a person only in the district of which he is a resident, or, in diversity cases, in the district of the residence of either the plaintiff or the defendant.[12] The mere existence of a choice of forums does not, as the cases already cited [13] indicate, make a statute one of special venue. Special venue statutes are statutes in which the Congress has legislated with reference to a particular kind of actions and has decreed that they might be brought in several forums, in some of which they could not be brought but for such legislation. Illus-

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trative are: actions relating to copyrights,[14] patent infringements,[15] actions for the recovery of taxes under the Internal Revenue Act,[17] a stockholder's derivative suits.[18] Of the same type is the special venue provision of the Federal Employer's Liability Act.[19] This Act gives to an injured employe a choice of three places where he might bring his action: (1) the district of the defendant's residence; (2) the district where the cause of action arose, and (3) the district in which the defendant is doing business at the time when the action is begun.

Concededly suits like the present one, instituted by the Government to enjoin violations of the Sherman Anti-Trust Act, are also governed by a special venue provision. Under it, such suits may be brought in the judicial district (1) where the corporation is an inhabitant, (2) in the district where it may be found, are (3) in the district where it transacts business.[20]

III

DOES THE DOCTRINE OF INAPPROPRIATE FORUM APPLY TO ACTIONS BROUGHT UNDER SPECIAL VENUE STATUTES?

It is the contention of the Government that when an action is governed by a special venue provision, the choice of forum by the actor in the case, be he individual or government, is absolute, and the doctrine of inappropriate forum is inapplicable.

There is a language in the Gulf case which, at first blush lends support to this contention. I so read the case myself and gave expression to the thought in a recent opinion.[21] The language reads:

"It is true that in cases under the Federal Employer's Liability Act we have held that plaintiff's choice of a forum cannot be defeated on the basis of *forum non conveniens*. But this was because the *special venue* act under which the cases are brought
203 was believed to require it. Baltimore & Ohio R. R. v. Kepner, 314 U. S. 44; Miles v. Illinois Central R. R., 315 U. S. 698. Those decisions do not purport to modify the doctrine as to other cases governed by the *general venue* statutes."[22] [Italics added.]

This language must be studied in the light of the cases to which the Supreme Court was referring, the Federal Employer's Liability cases,[23] and of the opinion delivered on the same day in the Koster case and written by the same Justice.[24]

When passed in 1908, the Federal Employer's Liability Act contained no special venue provisions. In 1910, it was amended to allow the present choice. Even before the decisions in the Kepner[25] and Miles[26] cases, lower federal courts had held that the

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privilege of venue conferred by this section was absolute and not subject to the discretionary power of the courts to nullify the choice upon any ground." Writers have inveighed against the unfairness of allowing so wide a choice.[28] Occasionally even a trial judge has expressed regret at his inability to grant relief in such cases.[29] And there is now pending a Bill before the Congress to limit the exercise of the right of the employe to choose the forum.[30] But, except during the First World War, when the Director General of the Railroads, under his war powers, issued an order providing that suits should be brought only in the district where the plaintiff resided at the time of the accrual of the action, or where the cause of action arose—an order which received the approval of the Supreme Court[31]—there has been no deviation from this strict interpretation of the venue provision. And when the Supreme Court adopted, in the Kepner and Miles cases, this rigorous interpretation of the statute, it merely continued the tradition which had been inaugurated by the lower courts. They all saw in the special venue provision of this particular law a direct mandate of the Congress which left no room for variation. This is quite evident from the following language in the concurring opinion of Mr. Justice Jackson in the Miles case:

"The functioning of this backward system of dealing with industrial accidents in interstate commerce burdens it with perhaps two dollars of judgment for every dollar that actually reaches those who have been damaged, and it leaves the burden of many injuries to be borne by them utterly uncompensated. Such being the major burden under which the workmen and the industry must function, I see no reason to believe that Congress could not have intended the relatively minor additional burden to interstate commerce from *loading the dice a little in favor of the workman* in the matter of venue. It seems more probable that Congress intended to give the disadvantaged workmen some leverage in the choice of venue, than that it intended to leave him in a position where the railroad could force him to try one lawsuit at home to find out whether he would be allowed to try his principal lawsuit elsewhere. This latter would be a frequent result if we upheld the contention made in this case and in the Kepner case."[32] [Italics added.]

This concurring opinion has a special significance because, with four justices dissenting, there would be no majority opinion without it. Added significance is given to this language by the fact that Mr. Justice Jackson also wrote the majority
204 opinions in the Gulf and Koster cases. And, because the question here turns on the meaning of the language already quoted in the Gulf case, the historical review which we have just

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given is of utmost significance. It shows clearly that what Mr. Justice Jackson, speaking for the majority of the court, meant to say was not that any special venue act excluded the application of the doctrine of inappropriate forum, but that the particular special venue statute under consideration, in the light of its history, excluded the application of the doctrine. And this is also apparent from a consideration of the opinion of Mr. Justice Jackson in the Koster case. That case involved an action brought under a special venue statute which is a part of Section 51 of the Judicial Code [23] and which reads:

"except that suit by a stockholder on behalf of a corporation may be brought in any district in which suit against the defendant or defendants in said stockholders' action, other than said corporation, might have been brought by such corporation and process in such cases may be served upon such corporation in any district wherein such corporation resides or may be found."

That this is a special venue statute is evident not only from its wording but also from the following language which appears in Footnote 2 of the opinion in the Koster case: [24]

"This reinforces the view that the cause of action is that of the corporation, if reinforcement is necessary. Moreover, it is obvious that the venue statute is not concerned with facilitating suit in the district of the stockholder's residence, but assures only that suit can be brought in any district in which the corporation can be sued. Greenberg v. Giannini, 140 Fed. (2) 550. When suit is brought in the district of the stockholder's residence, the venue statute does not provide for service on the corporation 'in any district wherein such corporation resides or may be found.' Since the corporation is an indispensable party, Davenport v. Dows, 18 Wall. 626, it must be only the chance stockholder's suit which can be maintained at the stockholder's residence. Corporations which have stockholders in many of the states may not find it necessary to qualify to do business and consent to be sued in all the states in which they have stockholders."

It is quite evident that, if the Gulf case is interpreted as holding that the doctrine of forum non conveniens does not apply to actions brought under special venue statutes, the ruling in the Koster case does not accord with it. For, as already appears from what precedes, there the court, although dealing with a special venue statute, nevertheless applied the doctrine to the situation. The two decisions made on the same day, in opinions written by the same Justice, can be reconciled only if we read the teaching of the Gulf case as here suggested, namely, that the court refused to apply the doctrine of forum non conveniens to Federal Em-

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ployer's Liability cases, not because such cases are governed by a special venue statute, but for the reason that the history of the law, the desire of the Congress to overbalance the privileges under the law in favor of the railroad employes, made the choice under the particular venue statute absolute.

So the discussion which precedes may be summed up in
205 this manner:

The doctrine of inappropriate forum can be applied by courts in all cases in which it has been applied in the past in Anglo-American jurisprudence. And this should be done, whether dealing with a general or with a special venue statute. Only when the legislative history shows an intent to confer a right so absolute as to exclude any interference on the part of courts, are we justified in failing to give effect to this doctrine.

IV

THE VENUE HERE

We have already referred to the venue provision in the Sherman Anti Trust Act.[36] The power of the Congress to enact such provision is undisputed.[37] But there is nothing in its legislative history to indicate that the Congress, by giving to the Government a choice of forums, intended to deprive the courts of their right to forbid resort to an inapropriate forum.

That the Congress did not intend to make the Government's choice absolute is also evidenced by the provision of the Act which reads:[38]

"Whenever it shall appear to the court before which any proceeding under Section 4 of this title may be pending, *that the ends of justice require* that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court it held or not; and subpoenas to that end may be served in any district by the marshal thereof." [Italics added.]

Had the Congress intended to give to the Government complete mastery over the situation, it certainly would not have made the presence of other parties dependent upon the determination by the court that the ends of justice require such presence. Of the nature of this power, a three-judge court said in United States v. Standard Oil of New Jersey:[39]

"The question presented by the petition for that purpose was, not in which court the ends of justice required the complainant to choose to institute its suit, but whether or not in this suit the ends of justice required that the nonresident defendants should be brought in.

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"The exercise of the power conferred upon the courts by the Constitution and the acts of Congress, to acquire jurisdiction of controversies and parties by the issue and service of their process, is not discretionary with the courts, when a complainant demands it. It is an imperative duty, which may not be renounced, and whose discharge may not be evaded. It is the duty of a court of equity to finally determine the entire controversy before it, and to do complete justice by adjusting all the rights involved therein. Hence, in every suit in which the power to acquire jurisdiction of the subject-matter and of the parties is conferred upon the court, the duty is imposed upon it, if its discharge is invoked by the complainant, to summon and hear, before decision, not only
206 every indispensable party, but every necessary party within reach of its process, every party who has an interest in the controversy, and who ought to be made a party to the suit in order that the court may finally adjudicate the whole matter, although if he were not amenable to process, final justice might be administered between the other parties without his presence."

In giving effect to public policy through suits of this character, courts are more likely to grant or withhold relief than in dealing with private interests.[40]

That the facts in this case call for the application of the doctrine of forum non conveniens is apparent from the nature of the action and from the analysis of the facts presented in the affidavits which I made in the companion criminal prosecution.[41] Practically the same affidavits are before me now. They show that the trial of the case in this district would require the chief defendants to go to places distant from the location of their business, to bring witnesses from afar, to move into this district records which are located in distant cities where their headquarters are maintained, and, in case the decree asked for by the Government is made, it will call for control of foreign corporations over a long period of years by a court which is far removed from the principal places of business of the main defendants. Indeed, the very allegations of the Complaint indicate that National and American were the instrumentalities through which this monopoly is established, that they, especially National, are responsible for the tie-ins, through acquisition of stock by the suppliers, and for the monopolistic practices which *they and not the local operating companies* engineered with the suppliers and through which the throttling of competition in supplies and equipment, of which the Government complains, is achieved.

We should also emphasize the fact, already adverted to elsewhere in this opinion, that the Government by the decree it asks

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in this case, is seeking to wrest control of local transportation companies from National; American and Pacific and to require them to divest themselves of such control. And *this type of long distance control of corporations who are not engaged in business in the state* is one of the considerations which have led to the application of the doctrine of forum non conveniens.

The language of the court in Williams v. Green Bay W. R. R. R. is very apposite:[42]

"We mention this phase of the matter to put the rule of forum non conveniens in proper perspective. It was designed as an 'instrument of justice.' Maintenance of a suit away from the domicile of the defendant—whether he be a corporation or an individual—might be vexatious or oppressive. An adventitious circumstance might land a case in one court when in fairness it should be tried in another. *The relief sought against a foreign corporation* may be so extensive or call for such detailed and *continuing supervision that that the matter could be more* efficiently handled nearer home.". [Italics added.]

Of the nine defendants, five—National, American,
207 Pacific, Mack, and Phillips—are not doing business in California and are not to be found in it. Federal Engineering merely makes investments for Standard, does no business in the district, and is not found in it. The control by National of the Los Angeles Transit Lines and of Long Beach City Lines, through ownership of their corporate stock, does not constitute "doing business" in the State.[43]

It follows that the factual situation here calls for the application of the doctrine of forum non conveniens, in the interest of justice, just as the same facts in the companion criminal prosecution required its transfer to another district. And this conclusion is also commanded by the fact that the decree sought by the Government will require control of the parent companies, National and American, over a long period of time, by a court far removed from their domiciles.

The Government has suggested that a dismissal of this Complaint might bring about an impossible situation. They refer to the fact that the principal places of business of the defendants are scattered throughout the country. And they express the fear that no matter where the Government reinstitutes its suit, some of the defendants might urge the application of the doctrine of inappropriate forum to them. The matter has received serious consideration. A court of equity should aim to balance societal and individual interests and to maintain the proper equilibrium between private rights and public weal.[44] And, in applying a statute like the Sherman Anti Trust Act embodying a Gov-

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ernmental policy of long standing, which aims to maintain in the economic field some semblance of equality and to prevent the hand of monopoly from suppressing or impeding the free flow of commerce between states, we should hesitate to adopt an approach to a problem like the one involved here which would result in quashing forever what the Government considers a meritorious suit.

But I feel that no disastrous result to the enforcement of the anti trust laws need, necessarily, follow a ruling adverse to the Government on this motion. Our action is reviewable on direct appeal to the Supreme Court,[45] within a maximum of sixty days after the entry of the final decree of dismissal. I am also of the view that this suit can be refiled in the Northern District of Illinois, Eastern Division, where National and American have their principal place of business, and withstand any further attack on venue. More, under date of September 18, 1947, counsel for all the defendants have joined in a letter in which they state that all the defendants believe that the Northern District of Illinois, Eastern Division, to which the companion criminal prosecution has already been transferred, is the proper forum for this action and that if this motion is granted and the suit is refiled there, the defendants will not move for its dismissal on the ground of inconvenient forum. At their request, the statement has been made a part of the record in this case.

In sum, whether the Government challenges this ruling and seeks a direct appeal to the Supreme Court within the sixty-day period, or, accepting it, refiles, the "set-back" will be temporary only. And the insuccess of the Government being based not on the court's disapproval of the social philosophy behind the Sherman Anti Trust Law,[46] but only on a disagreement as to the tactics in a particular case, which can be remedied readily, the Government's determination to enforce the statute vigorously will stand unaffected.

The motions to dismiss are granted.

Dated this 29th day of September 1947.

LEON R. YANKWICH, *Judge.*

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NOTES TO TEXT

[1] United States v. National City Lines, et al., 1947, D. C. Cal., 72 Fed. Sup. —.
[2] Sec. 21 (b) Federal Rules of Criminal Procedure.
[3] 15 U. S. C. A. 4.
[4] Rogers v. Guaranty Trust Co., 1933, 288 U. S. 123, 131.
[5] Virginian Ry. v. Federation, 1937, 300 U. S. 515, 552.
[6] Langnes v. Green, 1931, 282 U. S. 531; Canada Malting Co. v. Paterson Co., 1932, 285 U. S. 413.
[7] Kansas City Southern Ry. Co. v. United States, 1931, 282 U. S. 760, 763; Rogers v. Guaranty Trust Co., 1932, 288 U. S. 123; Virginian Ry. v. Federation, 1937, 300 U. S. 515; Massachusetts v. Missouri, 1939, 308 U. S. 1, 19.
[8] Langnes v. Green, 1931, 282 U. S. 531.
[9] Rogers v. Guaranty Trust Co., 1932, 288 U. S. 123.
[10] Williams v. Green Bay & W. R. Ry. Co., 1946, 326 U. S. 549; Gulf Oil Corporation v. Gilbert, 1947, 330 U. S. 501; Koster v. Lumbermen's Mutual Co., 1947, 330 U. S. 519.
[11] See cases in Notes 7 and 8.

NOTES TO TEXT—Continued

[17] 28 U. S. C. A. 112 (a) and (b).
[18] See cases in Notes 7 and 8. And see, Neirbro Co. v. Bethlehem Shipbuilding Corporation, 1939, 308 U. S. 165.
[19] 17 U. S. C. A. 85.
[20] 28 U. S. C. A. 109. The language of Mr. Justice Brandeis in Lumiere v. Wilder, Inc., 1923, 261 U. S. 174, 177, lends support to the view here expressed as to what a special venue statute is. Speaking of the special venue provision in copyright cases, he says:

"Ordinarily a civil suit to enforce a personal liability under a Federal statute can be brought only in the district of which the defendant is an inhabitant. Judicial Code, #51. In a few classes of cases, a carefully limited right to sue elsewhere has been given. In patent cases it is the district of which the defendant is an inhabitant or in which acts of infringement have been committed and the defendant has a regular and established place of business. Judicial Code #48; W. S. Tyler Co. v. Ludlow-Saylor Co., 236 U. S. 723. In cases under the antitrust laws, it is where the defendant 'resides or is found or has an agent'; (Act of October 15, 1914, c. 323, #4, 38 Stat. 730, 731); and in the case of corporations, the 'district whereof it is an inhabitant' or 'any district wherein it may be found or transacts business.'"

209 [21] 28 U. S. C. A. 105. The United States Court of Appeals for the District of Columbia has held that the doctrine of forum non conveniens is applicable to an action of this character. See Urquart v. American-La France Foamite Corporation, 1944, 144 F. (2) 542, 544.
[22] 15 U. S. C. A. 77 (2).
[23] 28 U. S. C. A. 112 (a).
[24] 45 U. S. C. A. 56.
[25] 15 U. S. C. A. 22.
[26] United States v. Standard Oil Co., decided on July 14, 1947, 72 Fed. Sup. —.
[27] Gulf Oil Co. v. Gilbert, 1947, 330 U. S. 501.
[28] Baltimore & Ohio Ry. v. Kepner, 1941, 314 U. S. 44; Miles v. Illinois Central Ry., 1942, 315 U. S. 698.
[29] Koster v. Lumbermen's Mutual Co., 1947, 330 U. S. 519.
[30] Baltimore & Ohio Ry. v. Kepner, 1941, 314 U. S. 44.
[31] Miles v. Illinois Central Ry., 1942, 315 U. S. 698.
[32] The following are among the Circuit Court cases in which the doctrine has been expounded: Schendel v. McGree, 1924, 300 Fed. 273; Southern Ry. v. Cochran, 1932, 56 F. (2) 1019; Wood v. Delaware & H. R. Corporation, 1933, 2 Cir., 63 F. (2) 255; Chesapeake & Ohio Ry. v. Vigor, 1937, 6 Cir. 90 F. (2) 7; Southern Ry. Co. v. Painter, 1941, 8 Cir. 117 F. (2) 100, 103, 106; and see, Leet v. Union Pacific Co., 1944, 25 Cal. (2) 605, 609–610.
[33] See Thomas B. Gray, Venue of Actions, 33 American Bar Association Journal, July 1947, page 659.
[34] See the language of the late Judge Grover L. Moskowitz in Sacco v. Baltimore & Ohio Ry. Co., 1944, D. C. N. Y., 56 Fed. Sup. 959.
[35] H. R. 1639.
[36] Missouri Pacific Ry. v. Ault, 1921, 256 U. S. 554; Alabama etc. Ry. Co. v. Journey, 1921, 257 U. S. 111.
[37] Miles v. Illinois Central Ry., 1942, 315 U. S. 698.
[38] 28 U. S. C. A. 112.
[39] Koster v. Lumbermen's Mutual Co., 1947, 330 U. S. 519.
[40] See cases in Notes 7 and 8.
[41] 15 U. S. C. A. 22.
[42] Eastman Kodak Co. v. Southern Photo Co., 1927, 273 U. S. 359.
[43] 15 U. S. C. A. 5
210 [44] 152 Fed. 290, 296. Counsel for the Government seem to think that this case teaches that the doctrine of forum non conveniens does not apply to antitrust cases. I do not so read it. It is to be borne in mind that the court was not asked to dismiss the action because of the choice of inappropriate forum. An order had been made by the Circuit Court to bring in the nonresident defendants. They moved to vacate the order and to quash the service of summons upon them. The court having exercised its judgment, having granted the order, and having determined that the ends of justice required the presence of the nonresident defendants, the matter was at an end. And the reviewing court, as the first sentence of the quotation says distinctly, was not determining in which court the ends of justice required the complainant to institute its suit, but whether the ends of justice required that other defendants be brought in. Clearly then, the question which confronts us here was not before the court in that case, and the ruling in it does not help the position of the Government in this case.
[45] Virginian Ry. v. Federation, 1937, 300 U. S. 515, 552.
[46] United States v. National City Lines, et al., 1947, D. C. Calif., 72 Fed. Sup. —.
[47] 326 U. S. 550.
[48] Peters v. Chicago etc. Ry., 1907, 205 U. S. 364; Philadelphia etc. Ry., v. McKibbin, 1917, 243 U. S. 264; People's Tobacco Co. Ltd. v. American Tobacco Co., 1917, 246 U. S. 79, 87.
[49] Roscoe Pound, A Survey of Social Interests, 1943, 57 Harvard Law Review, 1–39; Roscoe Pound, Law and the State, Jurisprudence and Politics, 1944, 57 Harvard Law Review 1193 et seq.; Roscoe Pound, A Survey of Public Interests, 1945, 58 Harvard Law Review, 909–929.
[50] 15 U. S. C. A. 29.
[51] My attitude towards this law has been expressed in the following opinions: United States v. Heating, Piping & Air Cond. Assn., 1940, D. C. Calif., 33 Fed. Sup. 978; United States v. Food and Grocery Bureau, 1942, D. C. Calif., 43 Fed. Sup. 966; United States v. Food and Grocery Bureau, 1942, D. C. Calif., 43 Fed. Sup. 974; United States v. San Francisco Electrical Contractors Assn., 1944, D. C. Calif., 57 Fed. Sup. 57.

211 In the District Court of the United States for the Southern District of California, Central Division

[File endorsement omitted.]
[Title omitted.]

Government's objections to proposed findings of fact and conclusions of law

Filed Oct. 15, 1947

Objections considered. Allowed in part at open hearing.—L. R. Y. J.

This memorandum is filed pursuant to Rule 7 (a) of the Rules of the District Court of the United States for the Southern District of California and states the Government's position with respect to proposed findings of fact and conclusions of law filed with this honorable Court by all defendants on October 10, 1947. This memorandum will state the Government's objections and contentions with respect to each of the paragraphs complained of in the defendants' proposed findings of fact.

1. Paragraph 2 of Defendants' Proposed Findings

There should be added to Paragraph 2 of the defendants'
212 proposed findings the following sentence: "Defendants National and Pacific control and manage operating subsidiaries in the Southern District of California including subsidiaries in the Cities of Glendale, Pasadena, Los Angeles, and Long Beach, but such control and management of said operating subsidiaries does not constitute doing business in this District."

2. Paragraph 4 of Defendants' Proposed Findings

The second sentence in Subparagraph (a) of the defendants' proposed findings should be amended to read as follows:

"Such agreements were negotiated by the chief executive officers of the various corporations and an undetermined number of such agreements were negotiated and entered into in Chicago."

It is the Government's contention that the combination and conspiracy charged consists of a large number of agreements entered into, both within and outside of the City of Chicago, including a large number of understandings reached by the defendants and their agents within the State of California.

The Government contends that Subparagraph (d) of Paragraph 4 of the defendants' proposed findings constitutes an improper attempt to frame the substantive issues of the trial in a purely

procedural motion. It constitutes an improper attempt to evaluate the evidence pertinent to the substantive issues in advance of its being offered. No answer has been filed. The Government holds, therefore, that such a finding of fact is wholly improper. However, if the evidence is to be evaluated, the findings of fact should reflect the contentions of both the plaintiff and the defendant with respect to the evidence to be offered. If the Court so holds, the Government maintains that Subparagraph (d) of Paragraph 4 should be amended to read as follows:

213 "The defendants have made the following analysis of the evidence to be offered at the trial. 'The essential matters to be tried will be the organization of National in Chicago in 1936; its growth and operation; its relationships and contracts with the supplier defendants and other suppliers, all of which took place in or stemmed from Chicago; the financing of National in and from Chicago; and the purchase of and direction and supervision of operating companies, all of which took place in and from Chicago. All these matters involve decisions and determinations made, on the highest management level, by executive officers of National and the supplier defendants in and about Chicago and the home offices of the suppliers. The essential testimony as to all these fundamental policies, decisions, and transactions must come from the executive officers of National and the supplier defendants, all of whom reside and have their place of business far from this district. The relevant documentary proof must come from the records maintained at the home office of all these companies, all of which are far removed from this district.'

"The corresponding analysis by the Government of the evidence to be offered at the trial is substantially as follows: 'The essence of the offense is the conspiracy, a large part of the proof of

214 which is to be found in the application of the restraints resulting therefrom. Restraints resulting from the aforesaid alleged combination and conspiracy were effectuated principally by two men, one of whom is W. R. Fitzgerald of Los Angeles, Vice President and Operating Manager of defendant National. Said restraints, which are evidence of the conspiracy itself, were effectuated on the Pacific Coast on a scale greater than any other section of the country in which the defendants conduct their operations. To prove such restraints, the Government expects to offer evidence from the files of subsidiaries of defendants National and Pacific, as well as from the files of defendants Standard and Federal within the State of California. The Government contends that in proving the conspiracy it expects to call a substantial number of witnesses from the Pacific Coast area and States adjacent thereto.' "

3. Paragraph 5 of Defendants' Proposed Findings

The Government contends that the following sentence should be added to Paragraph 5 of the defendants' proposed findings of fact: "All of the nine corporations named in the Complaint are primary defendants."

4. Paragraph 6 of Defendants' Proposed Findings

The Government contends that all of the corporations named in the complaint are primary defendants and that there is not enough evidence in the record to determine in advance of trial that "the head and front of the offending" is limited to the defendants National, American and Pacific.

5. Paragraph 7 of Defendants' Proposed Findings

With respect to Subparagraph 4 of the defendants' proposed finding Number 7, the Government contends that there is not
215 enough evidence in the record to sustain the finding that the operating subsidiaries of defendants National, American and Pacific are not coconspirators and, therefore, this finding should be eliminated.

The Government likewise holds that there is not sufficient evidence in the record to sustain a finding that the agreements by which the conspiracy was accomplished were negotiated by the defendants wholly outside of this District. Moreover, the Government believes that the findings should state explicitly that a number of agreements by which the conspiracy was accomplished were negotiated in the State of California.

The Government also contends that the following statement should be deleted from proposed finding Number 7: "The location of the operating companies has no bearing whatsoever on the question of the convenient forum."

6. Paragraph 10 of Defendants' Proposed Findings

The Government contends that the record does not sustain a finding that "no substantial hardship will be borne by the Government if trial of this case is held in Chicago."

7. Paragraph 12 of Defendants' Proposed Findings

With respect to the second paragraph of the defendants' proposed finding Number 12, it is not true that the affidavit of Jesse R. O'Malley filed in the criminal case is identical with the affidavit filed on behalf of the United States in this equity suit. The affidavit in the criminal case stated that the majority of the

witnesses who appeared before the Grand Jury were from Pacific Coast and adjacent States and that a great volume of documentary material was subpenaed by said Grand Jury from the defendants Federal, Standard and Pacific within the State of California as well as from operating subsidiaries of defendant National and American within the State of California.

216 With respect to Paragraph 2 of the defendants' proposed finding Number 12, the Government contends that there is no support in the record of a finding that the facts developed in the first case to be tried may be stipulated to a large extent in the second trial. The essence of the criminal proceedings is the guilt of the individual and corporate defendants. In the civil proceedings the question of relief is of equal importance to the issue of guilt. It is therefore probable that there will be a considerable difference in emphasis between the civil and criminal proceedings.

8. Paragraph 13 of Defendants' Proposed Findings.

For the record, it should be stated that the Government does not concur in the finding that the interests of justice require that this suit be dismissed.

9. Conclusions of Law

For the record, it should be stated that the Government does not concur in the proposed conclusions of law.

Dated October 14, 1947.

Jesse R. O'Malley,
JESSE R. O'MALLEY,
Special Attorney.

217 In the District Court of the United States in and for the Southern District of California, ——— Division

No. Civil 6747-Y

UNITED STATES OF AMERICA, PLAINTIFF

vs.

———, DEFENDANT

AFFIDAVIT OF SERVICE BY MAIL

UNITED STATES OF AMERICA,
Southern District of California, ss:

Yarmilla Vencel, being first duly sworn, deposes and says:

That (s)he is a citizen of the United States and a resident of Los Angeles County, California; that (her) business address is

1602 Post Office and Court House, Los Angeles, California; that (s)he is over the age of eighteen years, and is not a party to the above-entitled action;

That on October 14, 1947 (s)he deposited in the United States Mails in the Post Office at 312 No. Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Government's Objections to Proposed Findings of Fact and Conclusions of Law. Jackson W. Chance, O'Melveny & Myers; Oscar Trippet, Haight, Trippet & Syvertson; T. B. Cosgrove, Cosgrove, Clayton, Cramer & Diether; Hubert T. Morrow, Bennett, Finlayson & Morrow; Charles E. Millikan, Wright & Millikan; John M. Hall, Lawler, Felix & Hall, addressed to their last known address, at which place there is a delivery service by United States Mails from said post office.

YARMILLA VENCEL.

Subscribed and sworn to before me, this 14 day of Oct. 1947.

Clerk, U. S. District Court,
Southern District of California.
[SEAL] By THEODORE NOCKE,
Deputy.

218 In the District Court of the United States for the Southern District of California, Central Division

No. 6747-Y Civil

[File endorsement omitted:]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., AMERICAN CITY LINES, INC., PACIFIC CITY LINES, INC., FIRESTONE TIRE & RUBBER COMPANY, GENERAL MOTORS CORPORATION, PHILLIPS PETROLEUM COMPANY, MACK MANUFACTURING CORPORATION, STANDARD OIL COMPANY OF CALIFORNIA, FEDERAL ENGINEERING CORPORATION, DEFENDANTS

Findings of fact and conclusions of law

Filed Oct. 15, 1947

This matter came on for hearing on September 15, 1947, before the Honorable Leon R. Yankwich, United States District Judge, on the motions of the respective defendants to dismiss the cause on the ground that this Court is an inconvenient forum in which to try this cause; plaintiff being represented by Tom C. Clark, Attorney General of the United States, John F. Sonnett, As-

sistant Attorney General, William C. Dixon, Special Assistant to the Attorney General, Robert L. Rubin, Special Assistant to the Attorney General, James E. Kilday, Special Assistant
219 to the Attorney General, Jesse R. O'Malley, Special Attorney, Leonard M. Bessman, Special Attorney, and James M. Carter, United States Attorney; defendants National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc., being represented by Hodges, Reavis, Pantaleoni & Downey, New York, O'Melveny & Myers, Louis W. Myers, Pierce Works, Jackson W. Chance, Los Angeles, California; defendant Firestone Tire & Rubber Company being represented by Joseph Thomas, Akron, Ohio, Haight, Trippet & Syvertson, Oscar A. Trippet, Frank B. Yoakum, Jr., Los Angeles, California; defendant General Motors Corporation being represented by Cosgrove, Clayton, Cramer & Diether, T. B. Cosgrove, Leonard A. Diether, Los Angeles, California; defendant Phillips Petroleum Company being represented by Finlayson, Bennett & Morrow, H. T. Morrow, Los Angeles, California; defendant Mack Manufacturing Company being represented by Wright & Millikan, Loyd Wright and Charles E. Millikan, Los Angeles, California; and defendants Standard Oil Company of California and Federal Engineering Corporation being represented by Lawler, Felix & Hall, John M. Hall, Los Angeles, California; affidavits and reply affidavit having been filed by the moving parties and counter-affidavit having been filed on behalf of plaintiff; the matter having been orally argued; written memoranda of points and authorities having been filed on behalf of all parties; the cause having been taken under submission; and the Court having duly considered the facts and the law, now makes the following

Findings of fact

1. The State of organization of each defendant and the principal place of business of each is as follows:

220 Corporation	State of organization	Principal place of business
National City Lines, Inc.	Delaware	Chicago, Illinois.
American City Lines, Inc.	Delaware	Chicago, Illinois.
Pacific City Lines, Inc.	Delaware	Oakland, Calif.
Standard Oil Company of California	Delaware	San Francisco, Calif.
Federal Engineering Corporation	California	San Francisco, Calif.
Phillips Petroleum Company	Delaware	Bartlesville, Okla.
General Motors Corporation	Delaware	Detroit, Michigan.
Firestone Tire & Rubber Company	Ohio	Akron, Ohio.
Mack Manufacturing Corporation	Delaware	New York.

2. None of the defendants herein were doing business or were found in this District when this suit was brought, except defendants Standard, General Motors, and Firestone.

3. In substance, the Government alleges in its complaint the following:

(a) National and its subsidiaries, American and Pacific, own and control, or have a substantial financial interest in, corporations which are referred to as "operating companies," and which are engaged in providing local transportation service in more than 42 cities in 16 states;

(b) The operating companies of the defendants National, American, and Pacific use large quantities of busses, tires, tubes, and petroleum products, which are manufactured and handled by the supplier defendants, Phillips, Standard, General Motors, Mack, and Firestone;

(c) Beginning on or about January 1, 1947, and
221 continuing to the filing of the Complaint on April 10, 1947, the defendants have engaged in an unlawful combination and conspiracy to acquire ownership, control, or a substantial financial interest in a substantial part of local transit companies in various cities, towns, and counties in various States of the United States and "to restrain and to monopolize the aforesaid interstate commerce in motorbusses, petroleum products, tires, and tubes sold to local transportation companies in cities, counties, and towns in which National, American, and Pacific have, or have acquired, or in the future acquire, ownership, control, or a substantial financial interest in said local transportation companies, all in violation of Sections 1 and 2 of the Sherman Anti-Trust Act. Defendants threaten to and will continue to violate Sections 1 and 2 of the Sherman Anti-Trust Act unless the relief hereinafter prayed for is granted";

(d) The means of achieving this result are stated in the complaint to be these: Supplier defendants have furnished money and capital to National, American, and Pacific who have, in turn, caused their operating companies to purchase practically all their requirements in tires, tubes, petroleum products, and busses from the supplier defendants to the exclusion of products competitive with them; money made available by the supplier defendants was used to acquire control of local transit companies through the operating companies; National, American, and Pacific
222 would not renew contracts with others for the purchase or rental of materials and equipment without the consent of the supplier defendants; when an operating company was sold, National, American, and Pacific would require the new owner to assume the burden of the contracts for the exclusive purchase of equipment and supplies; no change of type of equipment or conversion to another type would take place without the consent of the supplier defendants; and the business of dealing in such

supplies and equipment would be allocated to the supplier defendants in an artificial, arbitrary, and uncompetitive manner;

(e) The effect of the combination and conspiracy is to eliminate competition from other suppliers in the sale of supplies and equipment to National, American, and Pacific and their operating companies, and to restrain interstate commerce in such equipment substantially and unreasonably, so far as the transportation companies controlled by National, American, and Pacific are concerned, to charge noncompetitive prices for such equipment and to allocate nation-wide markets of the defendants National, American, and Pacific and their operating companies for supplies and equipment between the various supplier defendants;

(f) The Government seeks a decree declaring that the defendants are engaged in a conspiracy in violation of the Sherman Act, that the supplier defendants be required to divest themselves of stock and other interests in the traction companies, that contracts between the parties be declared void, and that the traction
223 and operating companies be enjoined from acquiring their equipment from the suppliers. In addition to this, the following more specific prayers are included in the Complaint which are set forth in full because of their significance in these findings:

"4. That the defendants National, American, and Pacific, and their operating companies be perpetually enjoined from purchasing or otherwise acquiring any motorbusses, tires, tubes, and petroleum products used or consumed by said defendants or their operating companies without first advertising for competitive bids for such supplies, said advertising and competitive bidding to be pursuant to and under a plan to be incorporated into and made a part of any final order entered by the Court in this case;

"5. That the defendants National, American, and Pacific be ordered to make such disposition of their interests and holdings in local transportation companies as is necessary to restore competition and to dissipate the effects of the unlawful conspiracy; and that defendants National, American, and Pacific be permanently enjoined from acquiring, directly or indirectly, any financial interest in any local transportation system operating in any city, town, or county of any State of the United States without first obtaining the approval and authority of this Court;

"6. That the defendants herein and each of them and
224 their officers, directors, and representatives and all persons and corporations acting or claiming to act on behalf of them be perpetually enjoined and restrained from combining and conspiring to monopolize or to restrain interstate trade and commerce of the United States in the manner and by the means described herein, and be perpetually enjoined from engaging in or

participating in agreements, understandings, practices, or arrangements having a tendency to revive or continue any of the aforesaid violations of the Sherman Anti-Trust Act."

4. The basic transactions and relationships upon which the complaint seems to be based are the following:

(a) National in 1939 and American City Lines, Inc. (organized in 1943) in 1943 and 1944 made certain agreements with the suppliers under which they provided money to National or American against their securities. (Complaint, pars. 21 and 22.) Such agreements were negotiated by the chief executive officers of the various corporations, and were principally agreed upon in Chicago. These agreements were executed in Chicago by National or American and were severally executed by the suppliers at their offices in Akron, Ohio (Firestone), Pontiac, Michigan (General Motors), New York City (Mack), Bartlesville, Oklahoma (Phillips), and San Francisco (Standard). The stock of National or American so purchased was paid for and delivered in Chicago. When American was merged into National in 1946, a merger whose terms were negotiated in Chicago, the
225 stock of American previously purchased by certain of the suppliers was exchanged for stock of National.

(b) National in 1939 and American in 1943 and 1944 made certain agreements with the suppliers to purchase certain supplies. (Complaint, pars. 21 and 22.) Such agreements were executed by the chief executive officers of the various companies in Chicago and were principally agreed upon in Chicago. After each contract was approved it was executed by National or American in Chicago and then severally executed by the suppliers at their offices in Akron, Ohio (Firestone), Pontiac, Michigan (General Motors), New York City (Mack), Bartlesville, Oklahoma (Phillips), and San Francisco (Standard).

(c) National has always been managed from Chicago. All investigations respecting transit properties in the United States and the purchase of interests in transit properties were directed from Chicago by National and American. All important policies and decisions in connection with the purchase of interests in operating companies were made by National or American in Chicago.

(d) The essential matters to be tried from the standpoint of the defendants will be the organization of National in Chicago in 1936; its growth and operation; its relationships and contracts with the supplier defendants and other suppliers, all of which took place in or stemmed from Chicago; the financing of National in and from Chicago; and the purchase of and direction and supervision of operating companies, all of which took place in and from Chicago. All these matters involve decisions

226 and determinations made, on the highest management level, by executive officers of National and the supplier defendants in and about Chicago and the home offices of the suppliers. The essential testimony as to all these fundamental policies, decisions, and transactions must come from the executive officers of National and the supplier defendants, all of whom reside and have their place of business far from this district. The relevant documentary proof must come from the records maintained at the home office of all these companies, all of which are far removed from this district.

The trial of the case in this District would require the officers, agents, and employees of the defendants to go to places far distant from the location of their business, to bring witnesses from afar, to move into this District records which are located in distant cities where their headquarters are maintained.

5. In case the decree asked for by the Government is made, it will call for control of foreign corporations over a long period of years by a court which is far removed from the principal places of business of the main defendants.

6. The allegations of the Complaint charge in effect that National and American were the instrumentalities through which this alleged monopoly is established; that they, especially National, are allegedly responsible for the tie-ins, through acquisition of stock by the suppliers, and for the alleged monopolistic practices which they and not the local operating companies allegedly engineered with the suppliers and through which the alleged throttling of competition in supplies and equip-
227 ment, of which the Government complains, is achieved.

It is apparent from the Complaint that plaintiff claims that "the head and front of the offending" is National and its subsidiaries American and Pacific, and especially National, which owns and controls the two others. National has its main place of business in Chicago, Illinois. All its records are located there. Its thirty-four operating subsidiaries, which operate transportation systems in various cities, are operated and controlled from Chicago. The transactions, which form the basis of the Compiaint, took place chiefly in Chicago. The agreements with the other defendants, which the Government alleges had the unlawful monopolistic effect and which are the gist of the offense, were negotiated in Chicago over a long period of years. The trial of the action—as appears from the affidavits of E. Roy Fitzgerald—would require the attendance over a period of months of some of its keymen. This would result in a complete dislocation of its business at the place where it can least afford it—at the central place of control. The same conditions exist as to

the other nonresident defendants, the suppliers, such as Firestone, General Motors, Mack, and Phillips—that is, location of its chief business outside of the Southern District of California, nonresidence of executive officers and men in managerial positions who are needed as witnesses, books, and records kept outside the District, agreements entered into without the District and greater proximity to Chicago, Illinois, than to Los Angeles, California.

It is essential for the protection of defendants, including Standard and Federal (the main places of business of Standard and Federal being in San Francisco, California, outside of this District) that this case be tried at a location where
228 the evidence to refute this alleged conspiracy may be produced with the latest diminution or impairment, which place is Chicago, Illinois.

7. It is true, as the Government's affidavit asserts, that subsidiaries of National, Pacific, Mack, and each of the other defendants, excepting Phillips and Federal, conduct operations in this State; but the Court finds that those circumstances are unimportant and immaterial on the issue now before the Court, which is whether or not the interests of justice require dismissal of this cause on the ground of inconvenient forum.

The counteraffidavit filed on behalf of the Government does not deny the facts relating to National and to the other nonresident defendants. In substance, it asserts that many of the Government witnesses are local and that many documents it received were supplied locally. However, the documentary and other proof to be presented by the defendants is not available locally. Acts and contemporaneous declarations of the defendants, unrevealed by the Government's documentation, may change entirely the complexion of the case. The Government is not in a position to say that it has in its possession and can produce through witnesses and documentary evidence locally available all the facts bearing on the intent of the defendants. If it be assumed that the Government does not need and will not produce witnesses or documents located outside of California, the fact is that the defense of the defendant companies will be grounded on the testimony of witnesses who will have to be taken away from their head offices and on documentary evidence and company records which will have to be transported to this district. Firestone alone estimates that sixteen of its officers, executives,
229 or members of its managerial staff, residents of Akron and Chicago, may be needed as witnesses in the case.

The Government's affidavit lays much stress on the fact that the local operating subsidiary enjoys a measure of local control and that the largest restraint in the free flow of products resulted

from the acquisition of the local transportation system. The emphasis placed on the size of the Los Angeles transaction in the Government's affidavit and at the oral argument does not conform to the pattern of the Complaint.

Although the counteraffidavit filed on behalf of the Government states that the transportation system acquired in Los Angeles is the largest controlled by the system, nevertheless, none of the operating subsidiaries in California, in or out of Los Angeles County, are named parties defendant. Nor are they designated as conspirators, as is sometimes done in cases of this character when the Government chooses to bring suit against certain of the alleged conspirators only. They are merely vehicles through which the channeling of petroleum products, tires and other equipment was achieved. The agreements by which this was accomplished were negotiated by the defendants outside of this district. Although one overt act is alleged to have occurred in the district, in a suit of this character, an overt act is not necessary. The agreement is the essence of the charge. And the proof of that agreement lies in the actions of the controlling companies—National and the large suppliers—woh are alleged to have agreed and conspired with them, regardless of the location of the operating companies to whom the products were supplied, as a result
230 of this agreement. The transportation system in Los Angeles is only one of more than 40 operations in other cities in which National is interested, and this interest in Los Angels was acquired only in 1945, more than eight years after the alleged commencement of the concert of action in 1937.

8. This suit, if maintained in this District, would compel the defendants (1) to go to a place distant from the location of their business; (2) to employ or bring counsel to a distant city; (3) to bring witnesses from afar; (4) their business headquarters are in another city; (5) most of the records which relate to the transaction on which the Complainant is based are there. Under the circumstances (6) fairness would be absent and (7) the defendants would be put to unjustifiable expense, and (8) the United States District Court for the Northern District of Illinois, Eastern Division, would be deprived of its rightful jurisdiction.

A trial in this District would impose unnecessary hardships on the defendants and entail unjustifiable expense which it is in the interest of justice to avoid.

9. The Government by the decree it asks in this case is seeking to wrest control of local transportation companies from National, American, and Pacific, and to require them to divest themselves of such control. The decree sought by plaintiff will require control and administrative supervision by the Court of the parent

companies, National and American, over a long period of time. The detailed and continuing supervision and control of said defendant corporation, can be much more efficiently handled
231 by the Federal District Court at the domiciles of said defendant corporations, rather than by this Court far removed from the domiciles of said corporations.

10. This suit can be refiled in the Northern District of Illinois, Eastern Division, where National and American have their principal place of business, and will there withstand any further attack on venue or on grounds of inconvenient or inappropriate forum, as counsel for all the defendants have joined in a writing stating that all the defendants believe that the Northern District of Illinois, Eastern Division (Chicago) to which the companion criminal proceeding has already been transferred, is the proper forum for this action and that if the suit is refiled there, the defendants will not move for its dismissal on the ground of inconvenient forum, and, at their request, said statement has been made a part of the record in this case. The Government has an office of the Anti-Trust Division of the Department of Justice located in Chicago, Illinois, and no substantial hardship will be borne by the Government if trial of this case is held in Chicago.

11. Plaintiff made no application to the Court for any order under Section 5 of the Sherman Act that the ends of justice required an order bringing in the nonresident defendants who were neither transacting business nor were found in the Southern District of California; and the Court has made no finding or determination that the ends of justice required such defendants to be brought in and made parties to this suit.

12. A criminal indictment was returned in the above entitled Court, being proceeding No. 19270, Criminal, against
232 each of the defendants named in this equity suit. Said indictment was returned on the same date that the Complaint in this equity suit was filed. The transactions complained of and the charges made in the indictment in said No. 19270 are the same as those alleged in the Complaint on file herein. The allegations of the Complaint on file herein are substantially the same as the charges of the indictment in said criminal proceeding. The corporate defendants in said criminal proceedings are identical with the corporate defendants named in the Complaint on file herein.

On July 14, 1947, a motion to transfer said criminal proceeding to the United States District Court for the Northern District of Illinois, Eastern Division (Chicago) was presented to this Court in Criminal No. 19270, pursuant to the Rules of Criminal Procedure, Rule 21 (b). An affidavit of E. Roy Fitzgerald, President

of defendant National, was filed in support of said motion, setting forth identically the same facts that are set forth in the affidavit of said E. Roy Fitzgerald filed in this suit in support of the motion to dismiss on the grounds of forum non conveniens. The counteraffidavit of Jesse O'Malley, one of the attorneys for the United States in said Criminal No. 19270, was filed therein in reply to said affidavit of said E. Roy Fitzgerald and in opposition to said motion to transfer, said counteraffidavit of Jesse O'Malley being substantially the same (except for such transpositions as were made necessary by the difference between the two proceedings) with the affidavit filed herein by him on behalf of the United States in this equity suit. An answering affidavit of E. Roy Fitzgerald was also filed in support of said motion to transfer, a copy of which was filed herein in answer to said counteraffidavit of Jesse O'Malley herein. After briefing and oral argument
233 and on August 14, 1947, this Court rendered its written opinion in said Criminal No. 19270 and made and entered an order determining that in the interests of justice said criminal proceedings should be transferred to and tried in the United States District Court for the Northern District of Illinois, Eastern Division (Chicago) and ordered said proceedings transferred to the said District Court at Chicago, Illinois, and said proceeding was so transferred to and is now pending in said District Court in Chicago. To try said criminal proceeding in Chicago, Illinois, and also to try this civil equity suit in Los Angeles, California, would cause great hardship and inconvenience, would entail substantial additional expense to the defendants of employing and familiarizing two sets of local defense counsel with the very extensive and complicated facts involved in the two proceedings, one group of attorneys in Chicago to prepare and try the criminal proceeding, and the other group of attorneys in Los Angeles to prepare and try this civil suit. If said criminal proceeding and this equity suit are tried in different courts, one in Chicago and the other in Los Angeles, both sets of counsel will have to be furnished with copies of all the numerous papers, records and documents which relate to and have a material bearing on the matters complained of; considerable time would have to be
234 spent by both sets of counsel in studying and fully understanding these documents; both sets of counsel would have to be made thoroughly familiar with the details and ramifications of the businesses of the various defendants and of the business

dealings and relations which the various defendants had with each other from 1937 to date; both sets of counsel would have to confer from time to time over substantial periods of time with the numerous executives and key employees of defendants whose testimony may be material and relevant at the trials of both actions; and, in short, the entire preparation for trial would have to be duplicated. Duplication of effort would be financially costly to the defendants, as it would require substantially twice the amount of time to be spent in preparing the two actions for trial than would be required if both actions were tried in one jurisdiction. This duplication of effort would also require additional time of the many officers and employees of the defendants familiar with the transactions complained of, which time would have to be taken from the regular, normal corporate activities of the defendants. All of this duplication of effort and expense would be avoided by having the criminal proceeding and this suit tried in the same court. It would not be in the interests of justice to have the criminal proceeding tried in Chicago and this equity suit tried in Los Angeles, and the two actions should be tried in the same court.

13. The interests of justice require that this suit be dismissed without prejudice to its being refiled in the more appropriate and convenient forum.

235 From the foregoing Findings of Fact, the Court makes the following

Conclusions of law

1. This Court is an inconvenient and inappropriate forum in which to maintain this suit.

2. The interest of justice require that this suit be dismissed without prejudice to the plaintiff commencing a similar suit against these defendants in a more appropriate and more convenient forum.

Let judgment be entered accordingly.

Done in open court this 15th day of October 1947.

LEON R. YANKWICH,
United States District Judge.

[Strike out two of the following:]

~~(1) Approved as to form.~~
~~(2) Disapproved as to form.~~

(3) Receipt of copy of the foregoing findings and conclusions acknowledged this 10th day of October 1947, at 11:30 o'clock, A. M.

TOM C. CLARK,
Attorney General of the United States.
JOHN F. SONNETT,
Assistant Attorney General.
WILLIAM C. DIXON,
Special Assistant to the Attorney General.
ROBERT L. RUBIN,
Special Assistant to the Attorney General.
JAMES E. KILDAY,
Special Assistant to the Attorney General.
JESSE R. O'MALLEY,
Special Attorney.
LEONARD M. BESSMAN,
Special Attorney.
JAMES M. CARTER,
United States Attorney.
By J. R. O'MALLEY,
L. M.
Attorneys for Plaintiff.

Accept service of corrected pages 7, 8, 12, 15, & 16

J. R. O'MALLEY.

236 In the District Court of the United States for the Southern District of California, Central Division

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., AMERICAN CITY LINES, INC., PACIFIC CITY LINES, INC., FIRESTONE TIRE & RUBBER COMPANY, GENERAL MOTORS CORPORATION, PHILLIPS PETROLEUM COMPANY, MACK MANUFACTURING CORPORATION, STANDARD OIL COMPANY OF CALIFORNIA, FEDERAL ENGINEERING CORPORATION, DEFENDANTS

Judgment of dismissal

Oct. 15, 1947

Findings of Fact and Conclusions of Law having heretofore been signed by the Court, and good cause appearing therefor,

It is hereby ordered, adjudged, and decreed that the above entitled cause be and the same hereby is dismissed without

237 prejudice to commencement of a similar suit against defendants named herein in a more appropriate and more convenient forum.

It is further ordered that the motion for a more definite statement or bill of particulars and the motion to quash as to defendant American City Lines, Inc., be and each of them, is hereby denied without prejudice to the renewal thereof.

Done in open court this 15th day of October 1947.

LEON R. YANKWICH,
United States District Judge.

[Strike out two of the following:]

~~(1) Approved as to form.~~

~~(2) Disapproved as to form.~~

(3) Receipt of copy of the foregoing Judgment of Dismissal acknowledged this 10th day of October 1947, at 11:30 o'clock A. M.

TOM C. CLARK,
Attorney General of the United States.
JOHN F. SONNETT,
Assistant Attorney General.
WILLIAM C. DIXON,
Special Assistant to the Attorney General.
ROBERT L. RUBIN,
Special Assistant to the Attorney General.
JAMES E. KILDAY,
Special Assistant to the Attorney General.
JESSE R. O'MALLEY,
Special Attorney.
LEONARD M. BESSMAN,
Special Attorney.
JAMES M. CARTER,
United States Attorney.
By J. R. O'MALLEY,
L. M.
Attorneys for Plaintiff.

Judgment entered Oct. 15, 1947. Docketed Oct. 15, 1947. C. O. Book 46. Page 361.

EDMUND L. SMITH,
Clerk.
JOHN A. CHILDRESS,
Deputy

238 In the District Court of the United States for the Southern District of California, Central Division

[File endorsement omitted.]
[Title omitted].

Completion of record

Filed Nov. 4, 1947

In the affidavit filed by Jackson W. Chance in the instant suit on August 28, 1947, the following language was used in the final paragraph (page 2, lines 21 to 27, inclusive):

"The motion to transfer, the affidavit of E. Roy Fitzgerald in support thereof, the counter affidavit of Jesse O'Malley in opposition to said motion, the reply affidavit of E. Roy Fitzgerald in support thereof, the several memoranda of points and authorities in support of and in opposition to said motion, and the minutes of the Court in connection with said motion and Order, all in
239 said criminal proceedings No. 19270, are by this express reference thereto hereby incorporated herein and made a part hereof as fully as though set forth at length herein."

Although the Chance affidavit incorporates by reference the two affidavits of S. Roy Fitzgerald and the single affidavit of Jesse O'Malley filed in criminal proceedings No. 19270, said affidavits were not physically included in the record of civil action No. 6747–Y. To complete the record in this cause, certified photostatic copies of the motion of National City Lines, Inc., to transfer the aforesaid criminal cause to the Northern District of Illinois, the affidavit of E. Roy Fitzgerald in support of said motion, the affidavit of Jesse R. O'Malley in opposition, and the reply affidavit of E. Roy Fitzgerald are filed herewith. Certified copies of the aforesaid motion and affidavits are attached hereto and incorporated herein.

Dated November 4, 1947.

Jesse R. O'Malley,
JESSE R. O'MALLEY,
Special Attorney.

240 In the District Court of the United States for the Southern District of California, Central Division

Criminal No. 19270

[Title omitted.]

Motion for transfer

(Pursuant to Rule 21 (b))

Defendants National City Lines, Inc., American City Lines, Inc., Pacific City Lines, Inc., E. Roy Fitzgerald, and Foster G. Beamsley (hereinafter referred to as "said defendants") severally

move the Court for an order transferring this proceeding to the District Court of the United States for the Northern District of Illinois, Eastern Division, on the ground that it will be in the interest of justice for this proceeding to be transferred thereto. This motion is made pursuant to Rule 21 (b) of the Federal Rules of Criminal Procedure and is based upon the Indictment, the Bill of Particulars which it is requested by separate motion be furnished, upon affidavits hereafter to be filed in support hereof, and upon the Points and Authorities attached hereto, and such
241 supplemental Points and Authorities as may hereafter be filed. It is requested that the Court defer hearing and determination of this motion until after said Bill of Particulars is furnished. In this regard, reference is made to said Rule 21 (b).

O'MELVENY & MYERS,
LOUIS W. MYERS,
PIERCE WORKS,
JACKSON W. CHANCE,
By PIERCE WORKS,
Attorneys for defendants National City Lines, Inc., American City Lines, Inc., Pacific City Lines, Inc., E. Roy Fitzgerald, and Foster G. Beamsley.

242 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original motion for transfer (Pursuant to Rule 21 (b)) of the defendants National City Lines, Inc., American City Lines, Inc., Pacific City Lines, Inc., E. Roy Fitzgerald and Foster G. Beamsley, filed May 12, 1947, in the United States District Court for the Southern District of California, Central Division, and on August 21, 1947, in the United States District Court for the Northern District of Illinois, Eastern Division, in the case of United States of America vs. National City Lines, Inc., et al., Criminal No. 19270 (United States District Court for the Southern District of California, Central Division) and No. 47 Cr. 524 (United States District Court for the Northern District of Illinois, Eastern Division), now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 28th day of October, A. D. 1947.

ROY H. JOHNSON,
Clerk.

[SEAL]

By S. M. SHEPARD,
Deputy Clerk.

243 In the District Court of the United States for the Southern District of California, Central Division

Criminal Action No. 19270

UNITED STATES OF AMERICA

v.

NATIONAL CITY LINES, INC., ET AL.

Affidavit of E. Roy Fitzgerald in support of motion to transfer proceedings to District Court of the United States for the Northern District of Illinois, Eastern Division (Chicago)

STATE OF ILLINOIS,
County of Cook, ss:

E. Roy Fitzgerald, being duly sworn, deposes and says:

1. I am one of the defendants named in the Indictment. I am also a Director and President of National City Lines, Inc. (hereinafter referred to as "National"). I was a director and Chairman of the Board of American City Lines, Inc. (hereinafter referred to as "American") prior to its merger into National in 1946. Pacific City Lines, Inc. (hereinafter referred to as "Pacific"), a subsidiary of National, is also a defendant.

2. I make this affidavit on behalf of myself personally and also on behalf of defendant Foster G. Beamsley (a Vice President and Director of National); defendant National; and defendant Pacific. This affidavit is made in support of a motion of myself and said named defendants for an order pursuant to Rule 21 (b) of the Federal Rules of Criminal Procedure that in the interest of justice this proceeding be transferred to the District Court of the United States for the Northern District of Illinois, Eastern Division (Chicago).

244 3. This affidavit sets forth some of the more material facts respecting the history, business and operations of National, and the manifest hardship to the defendants, and particularly to National, of trying the Indictment in the Southern District of California. The transactions which appear to be the subject of the Indictment took place chiefly in Chicago, Illinois, and none of them took place in this District, (except the one overt act in this District referred to in Paragraph 5 hereof), as appears from the details set forth hereinafter. Any trial of this proceeding in Los Angeles would cause substantial hardship to the defendants, and especially the stockholders of National and of the other corporate defendants. Substantially all evidence, documentary and personal, which the defendants believe can possibly be relevant to the issues of this case, are located far distant from Los Angeles. It would be extremely difficult and expensive, and

impossible in some instances, to obtain the attendance in Los Angeles of the many witnesses whose presence will be essential to a full and fair trial. The necessary presence for several months at a trial in Los Angeles, far removed from the main office of National in Chicago, of the two individual defendants and chief executive officers of National (affiant and defendant Beamsley) and other key employees of National, would prevent their attention to the general business of National and work a great hardship upon it and its stockholders. Most of, if not all, the essential witnesses of all defendants, including National, are engaged in business or reside far distant from Los Angeles. Even to the extent that witnesses and documents are brought before the Court in Los Angeles, great and unnecessary expense will be incurred by the defendants. The Government has an office of the Antitrust Division in Chicago and no substantial hardship will be borne by it if the trial is held there.

4. The following facts charged in the indictment are true with respect to the residences or principal places of business of each defendant:

(i) National has its principal place of business in Chicago, Illinois;

(ii) American, prior to its merger into National in 1946, had its principal place of business in Chicago, Illinois;

245 (iii) Pacific has its principal place of business in Oakland, California;

(iv) Affiant and defendant Beamsley (officers of National) both reside in or about Chicago, Illinois;

(v) Defendant General Motors Corporation (hereinafter referred to as "General Motors") has its principal place of business in Detroit, Michigan;

(vi) Defendant Grossman, an officer of General Motors, resides in or about Detroit, Michigan;

(vii) Defendant Firestone Tire & Rubber Company (hereinafter referred to as "Firestone") has its principal place of business in Akron, Ohio;

(viii) Defendant Jackson, an officer of Firestone, resides in or about Akron, Ohio;

(ix) Defendant Mack Manufacturing Corporation (hereinafter referred to as "Mack") has its principal place of business in New York, New York;

(x) Defendant Phillips Petroleum Company (hereinafter referred to as "Phillips") has its principal place of business in Bartlesville, Oklahoma;

(xi) Defendants Stradley and Hughes, officers of Phillips, reside in or about Bartlesville, Oklahoma;

(xii) Defendant Standard Oil Company of California (hereinafter referred to as "Standard") has its principal place of business in San Francisco, California;

(xiii) Defendant Judd, an officer of Standard, resides in or about San Francisco, California; and

(xiv) Defendant Federal Engineering Corporation (hereinafter referred to as "Federal"), a subsidiary of Standard, has its principal place of business in San Francisco, California.

Thus, not one of the defendants has its principal place of business or resides in the District where the Indictment was returned.

Firestone, General Motors, Mack, Phillips, and Standard are sometimes hereinafter referred to as the "suppliers".

5. The Indictment does not charge that the alleged combination and conspiracy was formed or agreed upon or entered into in the Southern District of California. The only reference to this district is an allegation that the combination and conspiracy
246 was "carried out in part" in this district by the purchase by American on January 10, 1945, of an interest in Los Angeles Railway Corporation, pursuant to a verbal understanding entered into between it and defendant Federal on December 21, 1944, under which Federal supplied American part of the funds to be used in making such purchase, Federal receiving shares of American in return; the taking of control of the Los Angeles company on January 10, 1945, by the defendant American; and, pursuant to the oral understanding between Federal and American, the later granting of a contract by the Los Angeles company to Standard for petroleum products (par. 25 of Indictment).

The indictment does not charge that the alleged agreement, between Federal and American for the furnishing of capital to American and the acquisition of a stock interest by Federal in American for the acquisition of control of the Los Angeles company, was made in the Southern District of California. Moreover, while the alleged combination and conspiracy is charged to have commenced in 1937, the overt acts alleged to have been performed in this district deal with only one of the more than forty transit systems in which National had become interested, and this one transaction is alleged to have occurred in 1945, more than eight years after the alleged commencement of the concert of action.

6. Business of National and its relation to the suppliers.—National is, by the Indictment, alleged to be the central defendant and its relationships with the other defendants is attacked by the Indictment. It was with National that all of the suppliers are alleged to have made the agreements which are complained of, and National is alleged to have purchased interests in operating companies which carried out the alleged concert of action. Na-

tional is charged with having participated in each of the acts which are alleged to form the concert of action which is complained of.

National is a Delaware corporation. It was formed in 1936 at the instance of my four brothers and myself who then turned over to it a few bus properties in the middle west, which we had owned or controlled. We became, and always have been, directly or indirectly, the owners of the largest block of its common stock and its principal executive officers. I have been its President since its formation.

247 National was founded and has been developed on the policy of buying interests in transit systems, which were totally or partially obsolete, and then converting these systems into modern bus transportation units.

National has always been and now is managed and operated from Chicago. Its principal place of business has always been and now is Chicago.

Investigations respecting transit operating companies throughout the United States were directed from Chicago by National and American. All important policies and decisions in connection with the purchase of interests in operating companies were made by National or American in Chicago.

In practically every instance all of National's one hundred per cent subsidiaries, with the exception of the subsidiaries of Pacific, are now, and over the whole life of National have been, closely supervised from Chicago. Their books of account have been kept in Chicago, their purchases of supplies have been arranged in Chicago, and all other operations have been supervised in Chicago. The relation of National with the suppliers, in respect to the operating companies in which National owned less than a 100% interest, has always been carried on in Chicago.

7. So far as defendants are presently advised the indictment appears to be based essentially upon (1) separate or individual contracts under which the supplier defendants severally invested in the securities of National or American, and (2) contracts under which operating companies (in which National, American and Pacific were or are interested) purchased certain of their requirements of motor buses, tires and tubes, and petroleum products from the supplier defendants.

(a) All such contracts with National or American (for investment and for requirements) were separately and individually negotiated and agreed upon principally in Chicago and in part at the main offices of the respective supplier defendants.

After such contracts were approved and executed on behalf of National or American in Chicago, they were severally executed by the supplier defendants, respectively, at their offices in Akron,

Ohio (Firestone), Pontiac, Michigan (General Motors), New York, N. Y. (Mack, Bartlesville, Oklahoma (Phillips), and San Francisco, California (Standard).

248 (b) All transactions for the purchase of preferred or common stocks of National or American were negotiated and agreed upon in Chicago. The stocks so purchased were issued from, delivered to and paid for by the supplier defendants, respectively, in Chicago. Likewise, the retirement of the preferred stock in National owned by the supplier defendants, and the exchange of their stock in American for National's stock in connection with the merger of American into National, were carried out in Chicago.

8. Pacific City Lines.—The operations of Pacific are and were relatively unimportant as compared with the aggregate of the transactions upon which the Indictment appears to be based. Pacific was organized in May 1938, at the instance of National, City Coach Lines, Inc. (a corporation whose stockholders were located in or about Chicago and whose business was conducted from Chicago), Standard, and General Motors. The corporation was organized as a Delaware corporation and until April 1940 its main office was in Chicago from which place its affairs were conducted. In April 1940 the main office was changed to Oakland, California, and in December 1940 National sold its entire stock interest in Pacific and withdrew from any participation in its affairs. From December 1940 until July 1946, most of the stock of Pacific was owned by certain of the supplier defendants. In July 1946, pursuant to an agreement made on March 26, 1946, stock of National was issued in exchange for all of the outstanding stock of Pacific, and National then again became interested in and directed the operations of Pacific.

From its formation until April 1940 Pacific was managed and operated from Chicago by National in much the same manner as National managed and supervised its other subsiidary companies. Its stock issued prior to April 1940, including the shares originally subscribed for by certain of the suppliers, was issued from and paid for in Chicago, and up to April 1940 all its directors' meetings were held in Chicago, including meetings at which the original subscription agreements of the suppliers were approved. After April 1940 Pacific was managed and operated from Oakland and all meetings of directors were held in that city with the exception of five or six held in San Francisco and one in Pontiac, Michigan. The supply contracts between Pacific and certain of the suppliers were prepared and executed by the suppliers

249 at their main offices (Akron, Detroit of Pontiac, and San Francisco) and were executed by Pacific in Oakland.

At the present time, the general policies of Pacific are directed from Chicago. The dealings and negotiations between Pacific and the suppliers are carried on principally in Chicago, or at the home offices of the particular suppliers.

9. Proof to be offered at trial.—I am advised by counsel that the trial will involve an extensive inquiry into the history, business, and operations of National from its organization in 1936 up to the present time and, in addition, the complete relationship between National and the five suppliers during this period, and possibly the relationship between National and other supplier companies who operate outside the Southern District of California. Some of the matters which will be the subject of inquiry and testimony will be the organization of National in Chicago in 1936; the growth and operation of National in Chicago over the next ten years; its relationship and contracts with the supplier defendants and other supply companies, all of which took place in Chicago or stemmed from Chicago; its financing in and from Chicago; and the purchase of and its direction and supervision of operating companies, all of which took place in and from Chicago. This proof will require the production of a mass of contracts, correspondence, and other data. It will require testimony concerning the meetings of the Boards of Directors of National and American, all of which meetings, with the exception of a few, were held in Chicago; testimony respecting investigations made by National of many operating companies throughout the United States and its acquisition of interests in certain of them, all of which investigations were directed from Chicago, and records of which are located in Chicago; and testimony respecting the purposes and intentions of National in making arrangements with the suppliers and the effect of such arrangements upon the business of National and upon the transportation industry generally, all of which must be proved principally from records located in Chicago or from testimony of persons residing in or near Chicago. These are but a few of the many matters to be developed at the trial, and they suggest a great many others which will necessarily be gone into.

250 10. Documents to be used at trial.—The documents which were subpoenaed by the Government from National in the investigation which preceded the Indictment clearly reflect that the proof at the trial will be based primarily on papers and documents located in Chicago and the testimony of persons residing in or near Chicago.

Commencing in September 1946, Grand Jury subpoenas were served on National and others which called for hundreds of papers, records, documents, analyses, and compilations. National,

for itself and its thirty-four Chicago operated subsidiaries, furnished the Government with a mass of papers and documents taken from files in Chicago.

The documents and papers furnished by National consist, among others, of the contracts between National or American and their Chicago subsidiaries, and the suppliers; inter-office memoranda relating to such contracts which were written chiefly in Chicago; correspondence respecting the contracts written to or from Chicago; contracts, assignments, bills of sale, petitions to and decisions of state regulatory bodies relating to the acquisition of interests in operating companies; and various detailed statistical compilations, schedules, and tabulations. These compilations and schedules were prepared from numerous books of account and other corporate records of National in Chicago. The preparation of such compilations and schedules took several weeks and the work of many accountants, bookkeepers, clerks and other employees of National employed in Chicago. All of the persons engaged in the preparation of such compilations and schedules live in or about Chicago.

St. Louis Public Service Company, which operates in St. Louis, Missouri; Baltimore Transit Company, which operates in Baltimore, Maryland; Los Angeles Transit Lines, which operates in Los Angeles, California; and Pacific, also furnished the Government many documents and papers. Of such documents only a small number were furnished by Los Angeles Transit Lines, of which only a few concerned the relationship between the Los Angeles company and its suppliers.

251 11. Trial in the Southern District of California will work a great hardship upon the defendants, and particularly on National.—I have been advised by counsel, and it is my belief, that (i) the trial of this action will probably take several months; (ii) in view of the charges which cover a period of over ten years since 1937 it well be necessary in the interest of justice that there be made available to the Court full and complete testimony as to the many matters which will be relevant in determining the charges; (iii) the trial of this proceeding will necessarily require a mass of documentary evidence, consisting of agreements, memoranda, letters, statistical compilations, and other records, from the files of National, the five suppliers, and other companies; (iv) the documentary evidence, which will be offered by the Government as well as the various defendants, will itself necessarily require the supporting and clarifying testimony of many witnesses; (v) in addition to such documents and the witnesses in connection therewith, there will be the extended verbal testimony of a great many other witnesses; (vi) while it is impossible now to forecast how many witnesses will be called to testify, it

is likely that the number will be at least one hundred; and (vii) many essential witnesses will come from various parts of the country, but largely from the Chicago area, and only a small number, if any, from Los Angeles.

12. Since all important meetings and decisions affecting National, American and their subsidiary companies have been held or made in Chicago, this will require the presence in Los Angeles of a large part of their operating force. Both Mr. Beamsley and I must necessarily attend throughout the trial. Among others who will have to attend are Ed Fitzgerald, Vice President and Treasurer; E. V. Anderson, Vice President and Controller; J. M. Schramm, Secretary and Assistant Treasurer; and G. L. Walker, Assistant Secretary, all officers of National, who have their offices and who reside in or about Chicago. A number of key employees on the accounting staff of National who are familiar with the financial and accounting matters will undoubtedly be forced to come to and stay in Los Angeles throughout the trial.

252 The remoteness of Los Angeles for the many individuals who are familiar with the subject matters of this proceeding will greatly handicap National, and presumably the other defendants, in preparing for trial and obtaining the testimony of witnesses whom it regards as essential in fully developing all pertinent facts.

The trial of the proceeding in Los Angeles will involve a great financial expense to National. In addition to all of the executive staff and employees who must necessarily come to Los Angeles and stay throughout the trial, there will be the expense of preparation in Los Angeles. This preparation will necessitate the constant attention of Los Angeles counsel in addition to the general counsel for National, and in the course of preparation many of the executives and officers and employees of National will necessarily have to come to Los Angeles and spend considerable periods of time. The expense of travel to and from Los Angeles alone will be substantial.

Thus a trial in Los Angeles will cause substantial injury to the operations of National and the transit companies whose operations it supervises and will put upon National a very large financial burden. All this could be eliminated by a trial in Chicago.

13. If any offenses were committed at all, they were committed principally in Chicago and partly at the places where the various suppliers have their main offices. The alleged offenses were not committed in Los Angeles or in the Southern District of California, even though one overt act assertedly performed in fur-

therance of such offenses is alleged to have been performed there. This proceeding should not be tried in Los Angeles, which has no significant relationship to the matters involved, but should in the interest of justice be tried in the United States District Court in Chicago, where the offenses charged were for the most part committed, if committed at all. Chicago, and least of all Los Angeles, is the place where there is the greatest access to all the sources of proof, documentary, verbal or otherwise. Chicago, and least of all Los Angeles, is the place where it will be possible to obtain the attendance of willing witnesses at the least expense to the defendants and the Government. Los Angeles
253 is the place where the trial would result in the greatest hardship to the many defendants and their stockholders, without any corresponding benefit to the Government.

14. For the many reasons above set forth, I respectfully pray this Court in the sound exercise of its discretion to transfer this case for trial to the District Court of the United States for the Northern District of Illinois, Eastern Division (Chicago).

E. ROY FITZGERALD.

Sworn to before me this 29th day of May 1947.

[SEAL] MARY E. JOYCE, *Notary Public.*

254 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original affidavit of E. Roy Fitzgerald, in support of motion to transfer proceedings to District Court of the United States for the Northern District of Illinois, Eastern Division, filed June 2, 1947, in the United States District Court for the Southern District of California, Central Division, and on August 21, 1947, in the United States District Court for the Northern District of Illinois, Eastern Division, in the case of United States of America vs. National City Lines, Inc., et al., Criminal No. 19270 (United States District Court for the Southern District of California, Central Division) and No. 47 Cr. 524 (United States District Court for the Northern District of Illinois, Eastern Division), now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the sail of the aforesaid Court at Chicago, Illinois, this 28th day of October, A. D. 1947.

ROY H. JOHNSON,
Clerk.

[SEAL] By S. M. SHEPARD,
Deputy Clerk.

255 In the District Court of the United States for the Southern District of California, Central Division

[File endorsement omitted.]
[Title omitted.]

Affidavit of Jesse R. O'Malley in opposition to the motion to transfer this case to the District Court of the United States for the Northern District of Illinois, Eastern Division

Filed July 18, 1947

COUNTY OF LOS ANGELES,
State of California, ss:

Jesse R. O'Malley, being duly sworn, deposes and says:

That he is one of the counsel for the Government in the case of United States v. National City Lines, Inc., et al., Criminal No. 19270, in the Southern District of California, Central Division, and that he was connected with and participated in the investigation and presentation of the facts and evidence resulting
256 therefrom before the Grand Jury which returned the Indictment in said case and is actively engaged in the preparation of said case for trial and is personally familiar with the facts contained in the averments and allegations herein made.

Affiant avers that a substantial number of the agreements which the Government contemplates using in the trial of said case were negotiated in the State of California; that the evidence which the Government contemplates and expects to introduce to provide the allegations of the Indictment covers and relates to the activities of the defendants Standard Oil Company of California, Federal Engineering Corporation, General Motors Corporation, Firestone Tire and Rubber Company, and Pacific City Lines, Inc., in the West Coast area including the State of California in particular; that this evidence will cover a period of approximately nine years and that such evidence will also cover the activities of the defendant National City Lines, Inc., within the West Coast area including, among other activities, its actions within the past three years relating to the manner and method whereby it secured control of defendant Pacific City Lines, Inc., the Los Angeles Transit Lines, the Long Beach City Lines, and the Key System which operates in Oakland and the San Francisco Bay area in the State of California, as well as the relations between such companies and the supplier defendants named in the Indictment, exclusive of the defendant Phillips Petroleum Company.

Affiant further avers that the Government contemplates calling a substantial number of witnesses from the Pacific Coast and states adjacent thereto whose testimony will be introduced by the

Government to prove the existence and the effects of the conspiracy charged in the Indictment as well as the connection of the various defendants therewith. Affiant further avers that in presenting this matter to the Grand Jury, which returned the Indictment, a majority of the witnesses who testified resided in or were from the Pacific Coast area.

Affiant further avers that a large amount of documen-
257 tary evidence will be subpenaed by the Government from companies doing business in the Pacific Coast area which evidence will form a substantial part of the proof which the Government expects to offer in support of the allegations in the Indictment on the trial of the within case. Affiant further avers that more than 300 documents were subpenaed and returned to the Grand Jury by the defendant Pacific City Lines, Inc., during the course of the Grand Jury investigation of this case and that said defendant aso produced extensive tabulations and other compilations which were prepared from the books and records of said defendant Pacific City Lines, Inc., whose principal place of business is in Oakland, California.

Affiant further avers that the Government expects to subpena numerous documents, books, and records on the trial of this case from the defendant Standard Oil Company of California and Federal Engineering Corporation which defendants have their principal office within the State of California and carry on extensive business operations which relate to the restraints charged in the Indictment within the jurisdiction of this Court.

Affiant further avers that all the supplier defendants except Mack Manufacturing Corporation and Phillips Petroleum Company are found and transact business on a large scale in the Southern District of California; that affiant has reason to believe and therefore avers that defendant Mack Manufacturing Corporation is a wholly owned subsidiary of Mack Trucks, Inc., and that said Mack Trucks, Inc., does business in the Southern District of California through Mack International Motor Truck Corporation, its wholly owned subsidiary; that W. Ralph Fitzgerald, Vice President and Operating Manager of National City Lines, Inc., who appeared as a witness before the Grand Jury, which returned the Indictment, lives in the City of Los Angeles and has offices here from which he supervises the operations of defendant National City Lines, Inc., on the Pacific Coast; that

said W. Ralph Fitzgerald is one of the two officers of
258 defendant National City Lines, Inc., in charge of the purchases of busses, tires, tubes, and petroleum products for the operating subsidiaries of defendant National City Lines, Inc., the purchase of which products is the subject of the restraints

alleged in the Indictment; that defendant E. Roy Fitzgerald is Chairman of the Board of Directors of Los Angeles Transit Lines; that defendant Foster G. Beamsley is also a director of the Los Angeles Transit Lines; that the Government contemplates introducing important and substantial evidence on the trial of the within case in support of the principal allegations and charges made against the defendants in the Indictment, which evidence will relate to both the manner and method whereby control was acquired of Los Angeles Transit Lines by defendant American City Lines, Inc., and the manner and the method whereby the trade restraints described in the Indictment were thereafter imposed on said Los Angeles Transit Lines by the defendants; that defendant Pacific City Lines, Inc., is a wholly owned subsidiary of defendant National City Lines, Inc., and also carries on extensive business operations in the Southern District of California, which business operations are the subject of the restraints described in the Indictment; that said defendants Standard Oil Company of California, General Motors Corporation, and the Firestone Tire and Rubber Company all have large plants and business offices in the Southern District of California; that the only corporate defendant doing no business whatever in any manner in the Southern District of California is the Phillips Petroleum Company whose headquarters are in Bartlesville, Oklahoma.

Affiant further avers that the Government contemplates subpenaing documentary evidence from the defendant National City Lines, Inc., on the trial of this case but that affiant is informed and therefore avers that the filing system of said defendant National City Lines, Inc., is decentralized and that much of the documentary evidence to be produced by such defendant on the trial of such case, pursuant to subpena, will be found and
259 obtained from files of some of the subsidiaries of defendant National City Lines, Inc., many of which are doing business within the jurisdiction of this Court as before averred; that C. Frank Reavis of New York City, Counsel and Director of National City Lines, Inc., is reported to have made the following statement under oath before the Public Service Commission of Maryland on September 14, 1944, with reference to the twenty-eight operating companies which were then under the control of National City Lines, Inc., in which he indicated that many subsidiaries of National City Lines, Inc., were locally operated: "I do not mean to say National City operates them. Each subsidiary in its own city is responsible for its own operations."

Affiant further avers that information submitted to the Grand Jury, pursuant to subpena, by defendant National City Lines, Inc., disclosed that two groups of subsidiary corporations are con-

trolled by said defendant, i. e., those primarily directed from Chicago and those directed primarily by local management. Said information submitted by said defendant referred to the consolidated total assets of "Chicago operated companies" as totalling $29,499,201.45. Affiant has reason to believe and therefore avers that the assets of the Key System operated by the defendant National City Lines, Inc., in the City of Oakland and the San Francisco Bay area as of September 30, 1946, totalled $19,288,-616.54; that the price paid for the securities of the Los Angeles Transit Lines by defendant National City Lines, Inc., or its controlled subsidiary American City Lines, Inc., was $12,880,000; and that the total assets of the Key System and the Los Angeles Transit Lines, which operate in the Pacific Coast area and whose motor bus, tires, tubes, and petroleum products business is subject to the restraints charged in the Indictment, is in excess of the total assets of all of the so-called "Chicago operated companies."

Affiant further avers that the sale of busses, tires, tubes, and petroleum products, which is the subject of the trade restraints charged in the Indictment and concerning which the Gov-
260 ernment expects to introduce evidence on the trial of the within case, is far greater on the Pacific Coast than in any other area of the country in which the defendants conduct their operations. Affiant further avers that pursuant to subpena defendant National City Lines, Inc., produced figures before the Grand Jury which indicated that during the first eight months of 1946 motorbusses purchased by the so-called "Chicago operated companies" totalled only $769,681, where as during the same eight months' period the Los Angeles Transit Lines produced figures before the Grand Jury which indicated that during the same period its purchases of motor busses totalled $2,232,-975.58, all of which evidence the Government expects to produce, together with other evidence, on the trial of the within case in support of the allegations and charges made against all defendants named in the Indictment.

Dated July 18, 1947.

Jesse R. O'Malley
JESSE R. O'MALLEY,
Special Attorney,
United States Department of Justice.

Subscribed and sworn to before me this 18th day of July 1947.

[SEAL] MARY M. DONITTE,
Notary Public.

My Commission Expires Feb. 27, 1951.

261 In the District Court of the United States in and for the Southern District of California, Central Division

No. Cr. 19270

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., ET AL., DEFENDANT

AFFIDAVIT OF SERVICE BY MAIL

UNITED STATES OF AMERICA,
Southern District of California, ss:

Helen Sheridan, being first duly sworn, deposes and says:

That (s)he is a citizen of the United States and a resident of Los Angeles County, California; that (her) business address is 1602 Post Office and Court House, Los Angeles, California; that (s)he is over the age of eighteen years, and is not a party to the above-entitled action;

That on July 18, 1947 (s)he deposited in the United States Mails in the Post Office at 312 No. Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Affidavit of Jesse R. O'Malley in Opposition to the Motion to Transfer, etc.; Jackson W. Chance, O'Melveny & Myers; Oscar Trippet, Haight, Trippett & Syvertson; T. B. Cosgrove, Cosgrove, Clayton, Cramer & Diether; Herbert T. Morrow, Bennett, Finlayson & Morrow; Charles E. Millikan, Wright & Millikin; John M. Hall; Lawler, Felix & Hall, at their last known address, at which place there is a delivery service by United States Mails from said post office.

HELEN SHERIDAN.

Subscribed and sworn to before me, this 18th day of July, 1947.

_____,
Clerk, U. S. District Court,
Southern District of California.
By WM. A. WHITE,
Deputy.

262 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original affidavit of Jesse R. O'Malley in opposition to the motion to transfer this case to the District Court of the United States

for the Northern District of Illinois, Eastern Division, filed July 18, 1947, in the United States District Court for the Southern District of California, Central Division, and filed August 21, 1947, in the United States District Court for the Northern District of Illinois, Eastern Division, in the case of United States of America vs. National City Lines, Inc., et al., Criminal No. 19270 (United States District Court for the Southern District of California, Central Division) and No. 47 Cr. 524 (United States District Court for the Northern District of Illinois, Eastern Division), now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 28th day of October A. D. 1947.

ROY H. JOHNSON,
Clerk.

[SEAL] By S. M. SHEPARD,
Deputy Clerk.

263 In the District Court of the United States for the Southern District of California, Central Division

[File endorsement omitted.]
[Title omitted.]

Reply affidavit of E. Roy Fitzgerald in support of motion to transfer proceeding to District Court of the United States for the Northern District of Illinois, Eastern Division

Filed Aug. 11, 1947

STATE OF ILLINOIS,
County of Cook:

E. Roy Fitzgerald, being duly sworn, deposes and says:

1. I am one of the defendants named in the indictment. I am a Director and President of National City Lines, Inc., a defendant (hereinafter called National). This affidavit is in reply to the affidavit of Jesse R. O'Malley, one of the counsel for the Government. In opposition to the motion by all the defendants for an order, pursuant to Rule 21 (b) of the Federal Rules of Criminal Procedure, that in the interest of justice this proceeding be transferred from this district (where no one of the defendants
264 has his or its principal place of business or resides) to the District Court of the United States for the Northern District of Illinois, Eastern Division (Chicago).

2. I respectfully represent that the opposing affidavit deals with matters concerning certain local operating companies which are irrelevant or inconsequential with respect to the ultimate

grounds of the motion—the hardship to the defendants, especially National, of a trial in this district and the importance, if there is to be a full and fair inquiry, of a trial in Chicago.

3. In order to appraise the significance of the matters raised in the opposing affidavit it is necessary again to consider the nature of the restraints charged. The indictment alleges a concert of action extending over ten years commencing 1937 to acquire a substantial financial interest in companies which provide local transportation service and to eliminate and exclude all competition in the sale of motor buses, petroleum products, tires and tubes to such companies (Indictment par. 21). National is the central defendant and the indictment concerns and attack its relationship with the supplier defendants. The transportation system in Los Angeles is only one of the more than forty operations in which National is interested and this interest was acquired only in 1945, more than eight years after the alleged commencement of the concert of action in 1937. The basic transactions and relationships upon which the proceeding seems to be based are:

265 (a) National in 1939 and American City Lines, Inc. (organized in 1943) in 1943 and 1944 made certain agreements with the suppliers under which they provided money to National or American against their securities (Indictment pars. 22 and 23). Such agreements were negotiated by the chief executive officers of the various corporations and were principally agreed upon in Chicago. These agreements were executed in Chicago by National or American and were severally executed by the suppliers at their offices in Akron, Ohio (Firestone), Pontiac, Michigan (General Motors), New York City (Mack), Bartlesville, Oklahoma (Phillips), and San Francisco (Standard). The stock of National or American so purchased was paid for and delivered in Chicago. When American was merged into National in 1946, a merger whose terms were negotiated in Chicago, the stock of American previously purchased by certain of the suppliers was exchanged for stock of National.

(b) National in 1939 and American in 1943 and 1944 made certain agreements with the suppliers to purchase certain supplies (Indictment pars. 22 and 23). Such agreements were executed by the chief executive officers of the various companies in Chicago and were principally agreed upon in Chicago. After each contract was approved it was executed by National or American in Chicago and then severally executed by the suppliers at their offices in Akron, Ohio (Firestone), Pontiac, Michigan (General Motors), New York City (Mack), Bartlesville, Oklahoma (Phillips), and San Francisco (Standard).

(c) National has always been managed from Chicago.
266 All investigations respecting transit properties in the United States and the purchase of interests in transit properties were directed from Chicago by National and American. All important policies and decisions in connection with the purchase of interests in operating companies were made by National or American in Chicago.

4. Thus, it is the contracts and relationships between National and the suppliers that are challenged. It is a broad and national concert of action that is charged. It is at once apparent that the vital matters at any inquiry will not concern the local matters affecting the individual operating companies, but will concern the basic and "over-all" management and financial policies of National and National's relationship with its suppliers. The essential matters will be the organization of National in Chicago in 1936; its growth and operation; its relationships and contracts with the supplier defendants and other suppliers, all of which took place in or stemmed from Chicago; the financing of National in and from Chicago; and the purchase of and directions and supervision of operating companies, all of which took place in and from Chicago. All of these matters involve decisions and determinations made, on the highest management level, by executive officers of National and the supplier defendants in and about Chicago and the home offices of the suppliers. The essential testimony as to all these fundamental policies, decisions, and transactions must come from the executive officers of National and the supplier defendants, all of whom reside and have their place of business far from this district. The relevant documentary
267 proof must come from the records maintained at the home offices of all these companies, all of which are far removed from this district. The opposing affidavit does not and cannot question this.

5. The opposing affidavit deals with "local" or inconsequential matters which will not be a vital part of this inquiry. It does not even attempt to confine such "local matters" to this district, but speaks generally of the "Pacific coast area"—a wide area of which this district is only a part. While no purpose would be served by commenting in detail on all such "local matters," it may be appropriate to refer to some of the matters set forth in the opposing affidavit.

(a) The opposing affidavit attempts to outline the testimony which will be offered respecting National (p. 2). Reference is there made to the alleged activities in the "West Coast area" of a number of companies and it states that the evidence will cover the activities of National "within the past three years relating to the manner and method whereby it secured control of Pacific

City Lines, Inc., the Los Angeles Transit Lines, the Long Beach City Lines and the Key System which operates in Oakland and the San Francisco Bay area in the State of California, as well as the relations between such companies and the supplier defendants * * *." The above allegations are substantially the only ones in the opposing affidavit regarding the activities of National upon which it is sought to justify a trial in the Southern District of California. Stripped of its general language this merely means that National acquired control of these companies. This was done by purchase, except in the case of Pacific
268 City Lines, Inc., in which there was an exchange of stock, arranged and carried out in Chicago. The gist of the Indictment is not the making of such purchases—but the alleged broad concert of action between National and the suppliers. Purchases of interests in transportation properties were made by National in over forty communities and it certainly could not be argued that this case could fairly be tried in any one of them.

(b) The opposing affidavit (pp. 2, 3) contains general averments that a large amount of documentary evidence will be subpoenaed by the Government from companies doing business in the "Pacific Coast area" and that more than three hundred documents were subpoenaed from Pacific City Lines, Inc. during the Grand Jury investigation. Again—the Government could subpena every book and record of any Company, including Pacific City Lines, Inc., without affecting the ultimate fact that the alleged offense lies elsewhere and the substantial proof lies elsewhere—in Chicago. It is understandable that the Government obtained much material regarding local matters from many documents, extending from the East to the West coast.

(c) The opposing affidavit states (p. 3) that all the supplier defendants, except Phillips, do business in this district. However, the question is not one of venue and there is no significance in the fact that the supplier defendants may be here engaged in local sales activities.

(d) The opposing affidavit refers (p. 4) to the fact that defendant Beamsley and I are directors of Los Angeles Transit Lines. It has been only natural for officers of National
269 to serve as directors of companies in which National is interested. Thus, defendant Beamsley and I are members of the Board of Directors of St. Louis Public Service Company and I am a member of the Board of Baltimore Transit Lines. The opposing affidavit again refers (p. 4) to the "manner and method" of the acquisition of control of the Los Angeles Transit Company. But, again, this is not relevant to the main issue in the case.

(e) The opposing affidavit alleges (pp. 4, 5) that since National is a decentralized company "evidence to be produced by such defendant on trial "will be obtained from the files of its subsidiaries. This is in error. National is, of course, decentralized in that local operations of its wholly owned subsidiaries are carried on locally, and the operations of the companies in which it has investments are all carried on locally. These operations, however, have nothing to do with the alleged concert of action between National and the suppliers. All files (as to National) with respect to the broad concert of action alleged are located in the main office of National in Chicago and (as to the suppliers) are, to my information and belief, located at the main offices of the respective suppliers.

The opposing affidavit quotes a statement by C. Frank Reavis, counsel and a director of National, in a hearing before the Public Service Commission of Maryland, that "each subsidiary in its own City is responsible for its own operations." This statement was made in 1944 with respect to the operating companies, mostly in the Midwest, which were 100% owned by National, and referred to the local affairs of these companies, such as labor relations, maintenance of 100% equipment, and other like matters of
270 daily operation. As stated in my main affidavit with respect to such subsidiaries (p. 5), the books of account have been kept in Chicago, their purchases of supplies have been arranged in Chicago, and their operations supervised in Chicago. However, it is not such operation by the local units that is attacked in this proceeding, but the basic policies and decisions of National involved in its relationships with the suppliers, all of which have necessarily been made from or in Chicago. The relationship of National with the suppliers with respect to all companies in which National has been interested has always been carried on in Chicago.

(f) The opposing affidavit refers (p. 5) to the total assets of the Key System and the price paid for the securities of Los Angeles Transit Lines. This is irrelevant, as it would be irrelevant to mention that the total assets of the Baltimore Transit Company and St. Louis Public Service Company, in which National has investments, were, as of December 31, 1946, $56,731,650.48 and $44,721,927 which is substantially in excess of the total assets appearing on the balance sheet of either the Los Angeles Transit Lines or the Key System. While reference is made to the total dollar amount of supplies sold to the operating companies in the Pacific Coast area—not this district (p. 5), this fiscal information has no significance since the essential matters are the dealings and purchase policies between National and the suppliers, policies

negotiated and determined in places far distant from this district.

(g) Reference is made to Pacific City Lines, Inc. (all of whose operations are outside of this district). As set forth in my main affidavit (p. 6), the supply contracts be-
271 tween Pacific and certain of the suppliers were prepared and executed by the suppliers at their main offices, Akron, Detroit, Pontiac, and San Francisco, and were executed by Pacific in Oakand, California. The general policies of Pacific are directed in Chicago and dealings and negotiations between Pacific and the suppliers are carried on principally in Chicago or at the main offices of the particular suppliers.

(h) The mere circumstance that there might be some witnesses or some documents in this district cannot defeat the overwhelming justice in the application of defendants for a removal of this proceeding.

6. A transfer of the proceeding to Chicago is more than a matter of "convenience" to the defendants but is essential to avoid unnecessary hardship and to insure, by the availability of all important proof, a full and fair trial and is in the interest of justice. No facts are set forth in the opposing affidavit to weaken or question the factual showing of such hardship in the moving affidavits. Again to summarize briefly the compelline grounds for such transfer.

(a) Most of the many witnesses, including executive officers and key employees, who will be required to testify, reside in or about Chicago, or in Akron, Ohio, or in Detroit, Michigan, or in Bartlesville, Oklahoma, or in New York City, for all of whom Los Angeles would be remote and Chicago a vastly more centrally located place.

(b) All of the executive officers and key employees of National, substantially all of whom reside in or about Chicago, will be required to attend the trial and their absence from Chicago
272 would seriously interfere with the proper management of National and the many companies in which it is interested and will impose a great hardship upon National and its stockholders. As for National, this will include affiant and Mr. Beamsley, both of whom must necessarily attend through the trial; Ed Fitzgerald, Vice-President and Treasurer, E. V. Anderson, Vice-President and Comptroller, J. M. Schramm, Secretary and Assistant Treasurer, and G. L. Walker, Assistant Secretary, all of which officers of National have their offices and reside in or about Chicago.

(c) The main body of the large volume of documentary evidence is located in Chicago or in the home offices of the defendant suppliers, all of which are far distant from Los Angeles.

(d) A great burden of expenses will be imposed upon the defendants, especially National, if the trial is held in Los Angeles, rather than Chicago.

7. I respectfully urge that it would be difficult to find a more appropriate case for the application of Rule 21 (b) bearing in mind the essential purpose of the Rule, as it appears from the language of the Rule and the many advisory notes and comments of its draftsmen. I pray the Court for an order transferring the proceeding to the District Court in Chicago.

E. ROY FITZGERALD,

Sworn to before me this 6th day of August 1947.

[NOTARIAL SEAL] MARY E. JOYCE.
Notary Public in and for the County and State aforesaid.

273 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Roy H. Johnson, Clerk of the United State District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original reply affidavit of E. Roy Fitzgerald in support of motion to transfer proceeding to District Court of the United States for the Northern District of Illinois, Eastern Division, filed August 11, 1947, in the United States District Court for the Southern District of California, Central Division, and filed August 21, 1947, in the United States District Court for the Northern District of Illinois, Eastern Division, in the case of United States of America vs. National City Lines, Inc., et al., Criminal No. 19270 (United States District Court for the Southern District of California, Central Division) and No. 47 Cr. 524 (United States District Court for the Northern District of Illinois, Eastern Division), now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 28th day of October A. D. 1947.

ROY H. JOHNSON,
Clerk.

[SEAL] By S. M. SHEPARD,
Deputy Clerk.

274 In the District Court of the United States in and for the Southern District of California, ——— Division

No. —

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., ET AL., DEFENDANTS

AFFIDAVIT OF SERVICE BY MAIL

UNITED STATES OF AMERICA,
Southern District of California, ss:

Emma Jean Eason, being first duly sworn, deposes and says: That (s)he is a citizen of the United States and a resident of Los Angeles County, California; that (her) business address is 1602 Post Office and Court House, Los Angeles, California; that (s)he is over the age of eighteen years, and is not a party to the above-entitled action;

That on November 4, 1947 (s)he deposited in the United States Mails in the Post Office at 312 No. Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Completion of Record, addressed to Jackson W. Chance, O'Melveny & Myers; Oscar Trippet, Haight, Trippet & Syvertson; T. B. Cosgrove, Cosgrove, Clayton, Cramer & Diether; Hubert T. Morrow, Bennett, Finlayson & Morrow; Charles E. Millikan, Wright & Millikan; John M. Hall, Lawler, Felix & Hall, at their last known address, at which place there is a delivery service by United States Mails from said post office.

EMMA JEAN EASON.

Subscribed and sworn to before me, this 4th day of November

Clerk, U. S. District Court,
Southern District of California,
By CHARLES A. SEITZ,
Deputy.

275 In the District Court of the United States for the Southern District of California, Central Division

[File endorsement omitted.]
[Title omitted.]

Petition for appeal

Filed Dec. 3, 1947

The United States of America, plaintiff in the above-entitled cause, considering itself aggrieved by the final decree of this Court entered on the fifteenth day of October 1947, does hereby pray an appeal from said final decree to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court, the plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the order erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

The plaintiff prays that its appeal may be allowed and that citation be issued as provided by law, and that a transcript of the records, proceedings, and documents upon which said final decree was based, duly authenticated, be sent to the Supreme
276 Court of the United States under the rules of said Court in such cases made and provided.

John F. Sonnett,
JOHN F. SONNETT,
Assistant Attorney General.

William C. Dixon,
WILLIAM C. DIXON,
Special Assistant to the Attorney General.

Jesse R. O'Malley,
JESSE R. O'MALLEY,
Special Attorney.

Dated this 3d day of December, 1947.

277 In the District Court of the United States for the Southern District of California, Central Division

[File endorsement omitted.]
[Title omitted.]

Assignment of errors and prayer for reversal

Filed Dec. 3, 1947

The United States of America, plaintiff in the above-entitled cause, in connection with its petition for appeal to the Supreme Court of the United States, hereby assigns error to the record and proceedings and the entry of the final decree of the district court on October 15, 1947, in the above-entitled cause, and says that in the entry of the final decree the district court committed error to the prejudice of the plaintiff in the following particulars:

1. The court erred in holding that it has discretion to entertain a motion based upon forum non conveniens to dismiss an equity suit brought by the United States under Sections 1 and 2 of the Sherman Act.

2. The court erred in holding that the Southern District of California in an inappropriate forum in which to maintain the present suit.

278 3. The court erred in holding that the interests of justice require that this suit be dismissed, without prejudice to the plaintiff commencing a similar suit against these defendants in another forum.

4. The court erred in dismissing the plaintiff's complaint.

Wherefore, plaintiff prays that the final decree of the district court may be reversed to the extent that it is inconsistent with the errors herein assigned by the plaintiff, and for such other and fit relief as to the court may seem just and proper.

John F. Sonnett,
JOHN F. SONNETT,
Assistant Attorney General.
William C. Dixon,
WILLIAM C. DIXON,
Special Assistant to the Attorney General.
Jesse R. O'Malley,
JESSE R. O'MALLEY,
Special Attorney.

Dated this 3d day of December 1947.

300 In the District Court of the United States for the Southern District of California, Central Division

[File endorsement omitted.]
[Title omitted.]

Order allowing appeal

Filed Dec. 3, 1947

In the above-entitled cause, the United States of America, plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final decree of this Court in this cause entered on the fifteenth day of October 1947, and having also made and filed its petition for appeal, assignment of errors and prayer for reversal, and stateient of jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided.

It is therefore ordered and adjudged

That the appeal be and the same is hereby allowed as prayed for.

LEON R. YANKWICH,
United States District Judge

Dated this 3d day of December 1947.

303 In the District Court of the United States for the Southern District of California, Central Division

[Filed endorsement omitted.]
[Title omitted.]

Praecipe

Filed Dec. 8, 1947

To The Clerk, United States District Court, Southern District of California, Central Division:

The appellant hereby directs that, that in preparing the record in the above-entitled cause for its appeal to the Supreme Court of the United States, you include the following:

1. Complaint filed April 10, 1947.
2. Order of Judge Yankwich filed July 16, 1947, extending time in which to move or plead.
3. Motion of defendant Mack Manufacturing Corporation filed August 7, 1947.
4. Joinder of defendant Standard Oil Company in motion of defendant National City Lines, Inc., filed August 11, 1947.
5. Affidavit of E. Roy Fitzgerald, filed August 11, 1947.

6. Affidavit of C. Frank Reavis, filed August 11, 1947.

7. Motion to dismiss filed by defendant National City Lines, Inc., August 11, 1947.

304 8. Motion to dismiss filed by defendant The Firestone Tire and Rubber Company, August 11, 1947.

9. Joinder of defendant General Motors Corporation in motion to dismiss, filed August 11, 1947.

10. Motion of defendant Phillips Petroleum Company, filed August 11, 1947.

11. Amended motion to dismiss filed by defendant National City Lines, Inc., August 28, 1947.

12. Affidavit of Jackson Chance, filed August 28, 1947.

13. Amended motion to dismiss filed by defendant Phillips Petroleum Company, August 29, 1947.

14. Amended motion to dismiss filed by defendant The Firestone Tire and Rubber Company, August 29, 1947.

15. Amended motion to dismiss filed by defendant Mack Manufacturing Corporation, August 29, 1947.

16. Joinder of defendant General Motors Corporation in amended motion, filed September 2, 1947.

17. Joinder of defendant Standard Oil Company of California in amended motion, filed September 2, 1947.

18. Affidavit of Jesse R. O'Malley, filed September 3, 1947.

19. Affidavit of H. H. Hollinger, filed September 11, 1947.

20. Affidavit of Joseph Thomas, filed September 11, 1947.

21. Affidavit of C. Frank Reavis, filed September 11, 1947.

22. Reply affidavit of C. Frank Reavis, filed September 15, 1947.

23. Reply affidavit of E. Roy Fitzgerald, filed September 15, 1947.

24. Letter to Judge Leon R. Yankwich, filed September 18, 1947.

25. Order on motions, filed September 29, 1947.

26. Opinion of Judge Yankwich, filed September 29, 1947.

27. Findings of fact and conclusions of law, filed October 15, 1947.

28. Government's objection to findings of fact, filed October 15, 1947.

29. Judgment, filed October 15, 1947.

305 30. Certified copies, filed November 4, 1947, of motion to transfer and affidavits in criminal action 19270, Southern District of California, Central Division, incorporated by reference in the affidavit of Jackson W. Chance, filed in this cause on August 28, 1947, and including motion to transfer said criminal cause, affidavit of E. Roy Fitzgerald in support thereof, affidavit of Jesse R. O'Malley in opposition to motion to transfer and reply affidavit of E. Roy Fitzgerald.

31. Petition for appeal.
32. Assignment of errors and prayer for reversal.
33. Statement as to jurisdiction.
34. Order allowing appeal.
35. Citation.
36. Statement calling attention to the provisions of Supreme Court Rule 12 (3).
37. Praecipe for transcript of record.

John F. Sonnett,
JOHN F. SONNETT,
Assistant Attorney General.
William C. Dixon,
WILLIAM C. DIXON,
Special Assistant to the Attorney General.
Jesse R. O'Malley,
JESSE R. O'MALLEY,
Special Attorney.

Dated this 3d day of December 1947.

306 In the District Court of the United States for the Southern District of California, Central Division

[File endorsement omitted.]
[Title omitted.]

Counter praecipe

Filed Dec. 13, 1947

To the Clerk, United States District Court, Southern District of California, Central Division:

Appellee National City Lines, Inc., hereby directs that in preparing the record in the above-entitled cause for plaintiff's appeal to the Supreme Court of the United States, you include the affidavit of C. W. Haseltine, filed August 7, 1947, with the motion of defendant Mack Manufacturing Corporation.

Dated this 12th day of December 1947.

O'MELVENY & MYERS,
By JACKSON W. CHANCE,
Attorneys for defendant and appellee National City Lines, Inc.

307 STATE OF CALIFORNIA,
County of Los Angeles, ss:

Richard P. Roe, being first duly sworn, deposes and says:

That affiant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles,

over the age of eighteen (18) years, and not a party to or interested in the within action; that affiant's business address is 900 Title Insurance Building, 433 South Spring Street, Los Angeles 13, California;

That on December 13, 1947, affiant served the within counter praecipe upon counsel named below by depositing a true copy thereof in a United States mail box at Los Angeles, California, in a sealed envelope with postage thereon fully prepaid and addressed as follows: William C. Dixon, Jesse R. O'Malley, Robert J. Rubin, and Leonard M. Bessman, Anti Trust Division, Department of Justice, 1602 U. S. Postoffice and Courthouse, Los Angeles 12, California.

That there is a regular communication by mail between the place of mailing and the place so addressed.

RICHARD P. ROE.

Subscribed and sworn to before me this 13th day of December.

[SEAL] AGNES E. SHULTZ.
Notary Public in and for said County and State.

308 [Clerk's certificate to foregoing transcript omitted in printing.]

310 In the Supreme Court of the United States

October Term, 1947

No. 544

THE UNITED STATES OF AMERICA, APPELLANT

v.

NATIONAL CITY LINES, INC., ET AL.

On Appeal from the District Court of the United States for the Southern District of California

Statement of points to be relied upon and designation of parts of the record necessary for consideration thereof

Filed Feb. 12, 1948

1. Now comes the Appellant in the above cause and for its statement of points upon which it intends to rely in its appeal in this Court adopts the points contained in its Assignment of Errors heretofore filed herein.

2. The entire record in this cause as filed in this Court pursuant to the appellant's praecipe to the Clerk of the United States Dis-

trict Court for the Southern District of California is necessary for the consideration of the foregoing points and appellant designates said entire record for printing by the Clerk of this Court.

PHILIP B. PERLMAN,
Solicitor General.

Dated February 12, 1947.

311 In the Supreme Court of the United States

October Term, 1947

No. 544

THE UNITED STATES OF AMERICA, APPELLANT

v.

NATIONAL CITY LINES, INC., ET AL.

On Appeal From the District Court of the United States for the Southern District of New York

Counterdesignation of parts of record

Filed Feb. 16, 1947

Now comes the Appellee, National City Lines, Inc., and for its counterdesignation of parts of the record to be printed by the Clerk of This Court, designates the paper referred to in the counterpraecipe to the Clerk of the United States District Court for the Southern District of California as being material for a proper consideration of the issues involved in this appeal.

HODGES, REAVIS, PANTALEONI & DOWNEY,
By MARTIN D. JACOBS,

Attorneys for Appellee,
National City Lines, Inc.

Dated February 13, 1948.

312 Supreme Court of the United States

No. 544—, October Term, 1947

THE UNITED STATES OF AMERICA, APPELLANT

vs.

NATIONAL CITY LINES, INC., AMERICAN CITY LINES, INC., ET AL.

Order noting probable jurisdiction

Feb. 9, 1948.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

FEBRUARY 9, 1948.

[Endorsement on cover:] File No. 52774. Southern California, D. C. U. S. Term No. 544. The United States of America, Appellant vs. National City Lines, Inc., American City Lines, Inc., Pacific City Lines, Inc., et al. Filed January 20, 1948. Term No. 544 O. T. 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1948